UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:	**)**	
	)	
Jackson & Son Distributors, Inc.,	**)**	**Docket No. CWA-10-2025-0023**
d/b/a Jackson and Son Oil,	**)**	
	)	
Respondent.	**)**	

ORDER ON COMPLAINANT'S MOTION FOR LEAVE TO AMEND THE COMPLAINT

This proceeding was initiated on December 18, 2024, when Complainant, the Director of the Enforcement and Compliance Assurance Division in Region 10 of the U.S. Environmental Protection Agency ("EPA" or "Agency"), filed a Complaint against Respondent Jackson & Son Distributors, Inc., doing business as Jackson and Son Oil, pursuant to Section 311(b)(6) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(6). The Complaint charges Respondent with 28 counts of violation stemming from the allegation that at all times relevant to the Complaint, Respondent owned or operated a facility in Seaside, Oregon ("Facility"), Compl. ¶ 3.2, consisting of "a non-transportation-related, onshore facility that, due to location, could reasonably be expected . . . to discharge oil to or upon the navigable waters of the United States or adjoining shorelines in a harmful quantity," such that the Facility was subject to regulations at 40 C.F.R. Part 112, Compl. ¶ 3.14. Through counsel, Respondent filed an Answer to Complaint, Affirmative Defenses and Request for Hearing ("Answer") on January 17, 2025.

On January 28, 2025, I issued a Prehearing Order setting deadlines for the parties to engage in a prehearing exchange of information in this matter. Prehr'g Order at 4. At the request of the parties, those deadlines were extended multiple times and are now stayed pending resolution of the motion currently before me, Complainant's Motion for Leave to Amend the Complaint ("Motion to Amend"), filed on August 15, 2025. Respondent filed a Response in Opposition to Complainant's Motion to Amend the Complaint ("Response") on September 2, 2025, and Complainant filed its Reply in Support of Complainant's Motion for Leave to Amend the Complaint ("Reply") on September 12, 2025. For the reasons set forth below, Complainant's Motion to Amend is granted.

A. STANDARD FOR ADJUDICATING A MOTION TO AMEND A COMPLAINT

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). However, the Rules of Practice do not supply a standard for adjudicating such a motion. In the absence of administrative rules on a subject, I may look to the Federal Rules of Civil Procedure ("FRCP") and related case law for guidance. *See, e.g.*, *Envtl. 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).

Rule 15 of the FRCP provides that at this stage of a proceeding, "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 held 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 unless circumstances counseling against it are present, 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). Recognizing that denial of leave to amend a complaint might be appropriate under some circumstances, like those identified in *Foman*, the EAB has considered the most significant factor to be whether the amendment would unduly prejudice the respondent. *See, e.g.*, *Carroll Oil Co.*, 10 E.A.D. at 650; *Asbestos Specialists*, 4 E.A.D. at 828. The EAB does not view inconvenience as enough to amount to prejudice. *See Asbestos Specialists*, 4 E.A.D. at 830. Rather, the EAB has observed, "[p]rejudice is usually manifested by a lack of opportunity to respond or need for additional pre-hearing fact-finding and preparation that cannot be readily accommodated." *Lazarus*, 7 E.A.D. at 330.

B. PARTIES' ARGUMENTS

1. Complainant's Motion to Amend

Complainant proposes four sets of amendments to the Complaint. First, Complainant seeks to amend numerous paragraphs to account for information about compliance efforts undertaken by Respondent that, according to Complainant, was available to Respondent prior to the filing of the Complaint but was not provided to the EPA until after it had been filed. Mot. to Amend at 3, n.10. Specifically, Complainant maintains, for several of the alleged violations, the subject information "changes certain facts supporting the [alleged] violations and the number of days of [alleged] violation." *Id.* at 3. Complainant contends that updates to the Complaint to reflect Respondent's compliance efforts will not be prejudicial "because Respondent had this information in its possession when the EPA filed the original Complaint, and Respondent can therefore readily respond to it in its answer and prehearing exchange." *Id.* at 3-4 (citing *Adamas Constr. & Dev. Serv., PLLC*, 2020 EPA ALJ LEXIS 10, *7 (Jan. 2, 2020) (Order on Complainant's Motion for Leave to Amend the Complaint and on the Parties' Motions for Extensions of the Time for Prehearing Exchange)).

Second, Complainant seeks to amend paragraph 3.11 of the Complaint, which identifies factors that the EPA considered in concluding that the Facility could reasonably be expected to discharge oil in quantities that may be harmful to navigable waters of the United States or adjoining shorelines, also to reflect information regarding Respondent's compliance efforts that Respondent provided after the Complaint had been filed. Mot. to Amend at 4-5. Complainant explains that "[i]n determining whether there is a reasonable expectation of a discharge, the EPA considers several factors, as alleged in paragraph 3.11," including the volume for a "worst-case discharge" of oil from the subject facility, a figure that is calculated using Appendix D of 40 C.F.R. Part 112. *Id.* (citing *Crown Central Petroleum Corp.*, 2002 EPA ALJ LEXIS 1, at *109-10 (Jan. 8, 2002)). Relevant to this proceeding, Complainant asserts, "the volume for a worst-case discharge is calculated by adding the capacity of the largest aboveground storage tank within secondary containment to the capacity of any aboveground storage tanks without secondary containment." *Id.* (citing 40 C.F.R. Part 112, App. D). Complainant then asserts that as alleged in paragraph 3.11, it believed at the time it filed the Complaint that "the volume for a worst-case discharge calculated pursuant to Appendix D was 40,000 gallons because the capacity of the largest aboveground storage tank within secondary containment at the Facility was 20,000 gallons and the Facility also had two 10,000-gallon tanks that lacked secondary containment." *Id.* at 4-5. Complainant later learned from Respondent, however, that effective November 30, 2024, all of the aboveground storage tanks at the Facility had secondary containment, such that Complainant considers the volume for a worst-case discharge to be 20,000 gallons as of that date. *Id.* at 5. Complainant thus seeks to add 20,000 gallons to paragraph 3.11 as a relevant volume. *Id.* Complainant urges that this proposed amendment does not prejudice Respondent given that it proposes a smaller volume of oil to be considered in the analysis of whether there is a reasonable expectation of a discharge. *Id.*

Third, Complainant seeks to amend paragraph 3.10 of the Complaint to revise the

alleged pathways that a discharge of oil from Respondent's Facility would reasonably be expected to follow, the alleged receiving waters for such discharges, and the alleged flowpath for the waters downstream of the receiving water. Mot. to Amend at 6-10. Complainant notes that paragraph 3.10 alleges that "there is a reasonable expectation that a discharge from the Facility would flow . . . north via multiple pathways to field-verified and National Wetlands Inventory-mapped wetlands"; that "[t]hese wetlands abut and have continuous surface connection to a relatively permanent tributary . . . of Circle Creek"; and that the wetlands consist of "waters of the United States." *Id.* at 6-7 (citing Compl. ¶ 3.10). Noting that Respondent denies these allegations in its Answer, *id.* at 6 (citing Ans. ¶ 3.10), Complainant further states that as advised in other filings, the EPA is engaged in ongoing efforts to redefine the scope of "relatively permanent" waters, "continuous surface connection," and "waters of the United States," which was a basis for earlier requests to extend deadlines in this matter, *id.* at 6. But, Complainant avers, it wishes to avoid any further delays, as well as narrow the number of contested issues in this proceeding, in the interest of judicial efficiency. *Id.* at 7, 8. Accordingly, it seeks to amend paragraph 3.10 to remove the allegations concerning wetlands and allege instead that a discharge of oil from the Facility would reasonably be expected to flow north via multiple pathways all the way to Circle Creek itself. *Id.* at 7. Likewise, Complainant seeks to remove the allegation that a discharge of oil would also reasonably be expected to flow south and west to Circle Creek, as it no longer wishes to pursue that claim. *Id.* at 7 n.22. Additionally, Complainant asks to amend the description of the connection between Circle Creek and the Necanicum River contained in paragraph 3.10 based upon information clarifying that connection point that the EPA reviewed after filing the Complaint. *Id.* at 7-8. Complainant urges that these proposed amendments are in the interest of justice given the benefit of regulating the Facility to Circle Creek and nearby homes and businesses, which could be impacted by a discharge of oil from the Facility. *Id.* at 8-9. The proposed amendments also will not unduly prejudice Respondent, Complainant contends, as the prehearing exchange has not yet occurred. *Id.* at 9. In addition, Complainant argues, "the model and underlying factors that the EPA used for determining whether there is a reasonable expectation of a discharge are the same whether the discharge is to the wetlands or Circle Creek," with the only difference being "how far the oil will travel from the Facility" to receiving waters. *Id.*

Finally, Complainant seeks to update references in the Complaint to the maximum civil administrative penalties allowed to be assessed under the CWA, as most recently adjusted for inflation on January 8, 2025, after the Complaint was filed. Mot. to Amend at 10 (citing Civil Monetary Penalty Inflation Adjustment, 90 Fed. Reg. 1375 (Jan. 8, 2025)). Characterizing amendments to reflect this adjustment as "ministerial," Complainant urges that motions to amend complaints to account for such inflationary increases have been granted in past cases. *Id.* (citing *Borla Performance Indus.*, 2021 EPA ALJ LEXIS 3 (Mar. 8, 2021) (Order on Complainant's Motion for Leave to Amend Complaint); *Empire Lumber Co.*, 2013 EPA ALJ LEXIS 1, at *2-4 (Jan. 23, 2013) (Order Granting Motion to Amend Complaint to Revise the Penalty Amount Sought)).

In sum, Complainant argues, the proposed amendments will not prejudice Respondent insofar as Complainant is not seeking to allege additional violations, add new parties, or

propose additional penalties and Complainant filed the Motion to Amend early enough in this proceeding to afford Respondent an opportunity to address the allegations as amended during the prehearing exchange process. Mot. to Amend at 11. Complainant additionally argues that "[e]ach proposed amendment is well supported by cases where motions to amend have been granted in similar or nearly identical circumstances" and that "the proposed amendments are in the public interest and will promote the justiciable disposition of this matter." *Id.*

2. Respondent's Response

In its opposition to the Motion to Amend, Respondent first protests the filing of the Complaint itself, asserting that it came unexpectedly and without notice to Respondent after it had been communicating with the EPA for a year about its efforts to come into compliance. Resp. at 1-2. Respondent contends that had the EPA notified Respondent of its intent to file the Complaint, Respondent could have provided certain information about its efforts sooner. *Id.* at 3. Now, Respondent argues, it is prejudiced by the need "to file an amended answer and, more importantly, change its defense to address EPA's new alleged basis for jurisdiction, which is the crux of its motion." *Id.* First touching on the proposed amendment to paragraph 3.11 of the Complaint, Respondent then focuses its objections on the proposed amendments to paragraph 3.10, arguing that it is prejudiced by this "180 degree change" to the alleged grounds for Complainant's jurisdiction "on the eve of the prehearing exchange" because it is has already expended "considerable time and effort" to defend against the original allegations, including retaining two wetlands consultants, and now "it has no idea where or how EPA believes a discharge will actually flow and where the 'multiple pathways' it now asserts exists are." *Id.* at 3-5. Respondent also objects on the basis that the EPA is in the process of promulgating a new rule to define "waters of the United States," which, it argues, could further impact the allegations in this matter. *Id.* at 5-6.

In sum, Respondent contends that it has yet to learn the factual and legal basis for the allegations as potentially amended and that it will be extremely prejudiced by having to expend more time, effort, and resources to defend against the proposed amended Complaint, particularly as "it may then be faced with either another motion to amend the complaint or motion to amend the case schedule to address any new rule." Resp. at 5-6. Accordingly, Respondent urges, the Motion to Amend should be denied and the Complaint dismissed without prejudice, "pending either settlement of this matter or filing a new complaint when EPA figures out the basis for its alleged jurisdiction over Respondent." *Id.* at 6.

3. Complainant's Reply

In reply, Complainant first challenges Respondent's claim that it will be prejudiced by the need to file an amended answer, stating, "Simply put, if the requirement to file an answer constituted undue prejudice, courts would never grant motions to substantively amend a complaint." Reply at 2. Next, Complainant urges that Respondent does not sufficiently explain how Complainant's proposal to add 20,000 gallons as a relevant spill volume to paragraph 3.11 of the Complaint would be prejudicial. *Id.* at 2-3. Noting Respondent's assertion that it would

be required to "change its defense," Complainant maintains that "[i]t is unclear how adding a volume that is half the volume originally pled is prejudicial rather than beneficial to Respondent, who has not explained exactly how it will need to change its defense on this point." *Id.* at 2-3 (citing Resp. at 4-5). Regardless, Complainant asserts, it intends to provide evidence regarding both volumes in its prehearing exchange, and Respondent will then have the opportunity to present any contrary evidence in its own prehearing exchange. *Id.* at 3.

As for Respondent's objections to the proposed amendments to paragraph 3.10 of the Complaint, Complainant first quotes *Sackett v. EPA* for the prevailing definition of "waters of the United States" and then urges that the requested removal of wetlands from paragraph 3.10 would, in fact, *decrease* the likelihood of any future rulemaking having an impact on this matter because Circle Creek would be the only alleged receiving water and Circle Creek and its downstream waters "are clearly jurisdictional under *Sackett*." Reply at 3-4 (quoting *Sackett v. EPA*, 598 U.S. 651, 661, 671, 678 (2023)). Thus, Complainant contends, by narrowing the allegations to claim that there is a reasonable expectation of a discharge only to Circle Creek, Complainant "reduces the number of contested issues in this case and minimizes the risk of possible future delays associated with the need to assess the jurisdictional status of certain waterbodies consistent with the future rulemaking." *Id.* at 5.

Complainant continues that Respondent has not shown it will be unduly prejudiced by the proposed amendments to paragraph 3.10 on account of being required to "change its defense" after having already expended considerable time and effort. Reply at 5 (citing Resp. at 4-5). Complainant contends that Respondent has not provided enough information for a determination to be made that its expenditures have been substantial enough for undue prejudice to result if the proposed amendments are allowed. *Id.* at 5-6. Moreover, Complainant argues, to the extent that wetlands experts retained by Respondent have already conducted an analysis of the waters at issue, that analysis would still be relevant insofar as it 1) "[s]urely . . . considered whether Circle Creek and the waters downstream of it are jurisdictional" and 2) the subject wetlands are part of the alleged pathway that a discharge of oil from the Facility would reasonably be expected to take on its way to Circle Creek. *Id.* at 6. In response to Respondent's protest that "it has no idea where or how EPA believes a discharge will actually flow and where the 'multiple pathways' it now asserts exist are," Complainant points out that the reference to "multiple pathways" appears in the Complaint and that the Prehearing Order directs it to explain in detail the factual and/or legal bases for any allegations denied by Respondent. *Id.* at 7 (citing Resp. at 5; Prehr'g Order at 3). Complainant next points out that if granted leave to amend the Complaint, it would be alleging that "there is a reasonable expectation that a discharge would flow north via multiple pathways all the way to Circle Creek, which is located on the other side of the wetlands," rather than merely to the wetlands themselves. *Id.* at 9 (citing Resp. at 2, 5). Thus, Complainant argues, the allegations as amended would not constitute a "180 degree change" in Complainant's assertion of jurisdiction, as characterized by Respondent, but simply "one more step in the same direction." *Id.* (citing Resp. at 5).

C. DISCUSSION

Upon consideration, I find Complainant's arguments in support of its Motion to Amend to be compelling. As my former esteemed colleague Chief Administrative Law Judge Susan L. Biro once observed, "almost every amendment of a complaint results in *some* prejudice to a defendant[;] thus the test in each case is whether *undue* prejudice would result." *Univ. of Kansas Med. Ctr.*, 2007 EPA ALJ LEXIS 15, (Apr. 20, 2007) (Order Granting Motions to Amend Complaint and Answer) (citing *Alberto-Culver Co. v. Gillette Co.*, 408 F. Supp. 1160, 1162 (N.D. Ill. 1976)). This test "requires a court to balance the general policy that controversies should be decided on merits against the prejudice that would result from permitting a particular amendment." *Id.* (citing *Alberto-Culver Co.*, 408 F. Supp. at 1162).

Here, the proposed amendments will undoubtedly require Respondent to expend some additional resources on its defense, such as to prepare an amended answer. However, I hardly consider this prejudice to outweigh the policy favoring liberal amendments of pleadings, such that I would deem it undue. As noted by Complainant, some of the proposed amendments challenged by Respondent were prompted by information about Respondent's compliance efforts, which Respondent would seemingly be able to access and respond to in its amended answer and prehearing exchange with relative ease. As for Respondent's opposition to amending the alleged pathways that a discharge of oil from Respondent's Facility would reasonably be expected to follow and the alleged receiving waters for such discharges, I agree with Complainant that the objections fall short of showing that Respondent would be unduly prejudiced. Rather, as argued persuasively by Complainant, those proposed amendments serve to simplify the contested issues and reduce the likelihood that future rulemakings regulating "waters of the United States" have an impact on the violations charged in this matter, which would benefit Respondent and Complainant alike. While Respondent may complain that it has already expended resources to defend against the allegations as originally pled, it is unclear that the amount of the expenditures is substantial enough to be considered unduly prejudicial, especially seeing as how some of the information gathered by Respondent is likely still to be relevant to the allegations as amended. And to the extent that Respondent may not yet know the factual and legal bases for the revised allegations, that is the purpose of the prehearing exchange, with each party having been ordered to provide the evidence it intends to rely upon in support of its position in this proceeding and Complainant in particular having been ordered to provide "a brief narrative statement, and a copy of any documents in support, explaining in detail the factual and/or legal bases for the allegations denied or otherwise not admitted in Respondent's Answer." Prehr'g Order at 3. Finally, I do not share Respondent's criticism of the timing of the Motion to Amend. Indeed, I consider the amount of prejudice to Respondent resulting from the amendments being proposed "on the eve of the prehearing exchange," when the parties still have ample opportunity for preparing their direct cases and any rebuttals, to be slight, if anything.

For the foregoing reasons, Complainant's Motion to Amend is hereby **GRANTED**. Because Respondent and this Tribunal received a signed copy of the proposed Amended Complaint as an attachment to the Motion to Amend, the Amended Complaint is hereby

deemed to have been filed and served as of the date of this Order, and it is now the governing complaint in this matter. Consistent with the Rules of Practice on the subject, Respondent shall file its answer to the Amended Complaint within 20 days from the date of this Order. *See* 40 C.F.R. § 22.14(c). Following receipt of Respondent's answer to the Amended Complaint, I will issue an order resetting the deadlines for the parties to engage in the prehearing exchange.

SO ORDERED.

Michael B. Wright
Chief Administrative Law Judge

Dated: October 7, 2025
Washington, D.C.

In the Matter of *Jackson & Son Distributors, Inc., d/b/a Jackson and Son Oil*, Respondent
Docket No. CWA-10-2025-0023

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Order on Complainant's Motion for Leave to Amend the Complaint, dated October 7, 2025, and issued by Chief Administrative Law Judge Michael B. Wright, was sent this day to the following parties in the manner indicated below.

Pamela Taylor

Pamela Taylor
Paralegal Specialist

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

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Dated: October 7, 2025
Washington, D.C.