

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF	)	
	)	
ADAMAS CONSTRUCTION AND	)	<b>COMPLAINANT’S MOTION FOR</b>
DEVELOPMENT SERVICES, PLLC	)	<b>LEAVE TO AMEND THE</b>
	)	<b>AMENDED COMPLAINT</b>
	)	
AND	)	
	)	
NATHAN PIERCE,	)	
	)	
Respondents.	)	Docket No. CWA-07-2019-0262
	)	
Proceedings under Section 309(g) of the	)	
Clean Water Act, 33 U.S.C. § 1319(g)	)	

COMPLAINANT’S MOTION FOR LEAVE TO AMEND THE AMENDED COMPLAINT

COMES NOW, the United States Environmental Protection Agency (“EPA” or “Complainant”), pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1 to 22.45 and submits this Motion for Leave to Amend the Amended Complaint.

1. The Complaint in this matter was filed September 6, 2019. The Complaint contains two counts alleging that Respondents violated the Clean Water Act (“CWA”). The counts allege that Respondents failed to maintain records as required by 33 U.S.C. § 1345 (“Count 1”) and failed to respond to an information request as required by 33 U.S.C. § 1318 (“Count 2”). EPA pleaded a penalty of \$59,583.

2. Respondents filed an Answer with EPA's Regional Hearing Clerk on October 16, 2019.

3. Complainant filed an Amended Complaint on January 2, 2020.

4. The hearing on this matter has been scheduled for the week of August 22, 2022.

5. Complainant seeks to amend the Amended Complaint to better conform the recordkeeping requirements for applicators of sewage sludge to the evidence.

Complainant's review of the evidence indicates citations included in the Complaint and Amended Complaint concerning the information a sewage sludge applicator is required to develop and retain are likely not applicable given the evidence currently in the record or anticipated from witness testimony as the proposed amendment.

Complainant seeks to revise Paragraphs 19 and 20 to include the applicable citations and requirements. Count 1 remains unchanged, but the proposed clarification will aid the Court and the Respondents. The benefit to the Complainant is that the amendment will allow it to focus on the requirements more clearly applicable to the Respondents.

6. Complainant contacted Respondents on July 19, 2022. Respondents notified Complainant their position is to oppose the motion to amend the complaint.

7. Pursuant to 40 C.F.R. § 22.14, the Complainant may amend the complaint after the Respondent has filed an answer only upon motion granted by the Presiding Officer. Such motions are freely granted where the ends of justice are served and no prejudice to the opposing party results. 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. EPA*, 774 F.2d 1008, 1012 (10<sup>th</sup> Cir. 1985). 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. *In re: Port of Oakland*, MPRSA Appeal No. 91-1 (EAB, August 5, 1992).

8. Granting this motion to amend will not cause prejudice to Respondents. The recordkeeping requirements for sewage sludge applicators listed in the revised citations are less stringent than in the Complaint and Amended Complaint. Importantly, the revisions do not change either of the violation counts except to clarify a less stringent recordkeeping requirement for Respondent and do not result in change to the proposed penalty. In sum, Respondents' potential liability is unchanged, thus, Respondents will not be prejudiced by this amendment.
9. Complainant is providing notice to Respondents and an opportunity to answer before the scheduled hearing. Finally, this amendment is in the public interest and will promote the justiciable disposition of this matter.
10. For the reasons cited above, Complainant respectfully requests leave of the Court to amend the Amended Complaint.

RESPECTFULLY SUBMITTED this 19th day of July 2022.

/s/ Chris Muehlberger

Chris Muehlberger, Assistant Regional Counsel

Office of Regional Counsel

U.S. Environmental Protection Agency, Region 7

11201 Renner Boulevard

Lenexa, Kansas 66219

Email: [muehlberger.christopher@epa.gov](mailto:muehlberger.christopher@epa.gov)

Telephone: (913) 551-7623

CERTIFICATE OF SERVICE

I certify that the foregoing Complainant's Motion to Amend the Complaint, Docket No. CWA-07-2019-0262, has been submitted electronically using the OALJ E-Filing System.

A copy was sent by email to Respondents at [adamas.mt.406@gmail.com](mailto:adamas.mt.406@gmail.com):

Date: 7/18/2019

/s Chris Muehlberger

Chris Muehlberger, Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
Email: [muehlberger.christopher@epa.gov](mailto:muehlberger.christopher@epa.gov)  
Telephone: (913) 551-7623