

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )  
 )  
Florida Avenue Mid-Atlantic Petroleum )  
Properties, LLC )  
and ) Docket No. RCRA-03-20098-0430  
Mid-Atlantic Petroleum Properties, LLC., )  
 )  
Respondents. )

**ORDER GRANTING MOTION TO AMEND COMPLAINT  
TO CORRECT NAME OF RESPONDENT**

This proceeding was initiated by a Complaint issued on September 23, 2008, naming the two entities indicated in the caption above as Respondents. After a Prehearing Order was issued, upon a report that the parties had reached an agreement in principle to settle this matter, an Order issued on January 7, 2009, granted an extension of time until January 30, 2009, for the parties to file a Consent Agreement and Final Order (CAFO) or for Complainant to file its prehearing exchange. On January 8, 2009, apparently not having yet received such Order, Complainant filed a "Joint Motion to Substitute Respondent and to Extend Stay of Case in Abeyance" (Joint Motion).

The Joint Motion requests that this proceeding be stayed until January 30, 2009, when the parties anticipate filing a CAFO. This request has been fully addressed in the January 7<sup>th</sup> Order, and is therefore moot.

Secondly, the Joint Motion requests issuance of an order permitting the parties to correct the identity of one of the named Respondents, Florida Avenue Mid-Atlantic Petroleum Properties, LLC. The Joint Motion explains that Respondents' counsel has advised Complainant that such name is incorrect and the true legal name of that Respondent entity is "Florida Avenue MAPP, LLC."


The request to correct or substitute the name of a respondent is in essence a motion to amend the complaint. This proceeding is governed by the Consolidated Rules of Practice codified at 40 C.F.R. Part 22 ("Rules"). Rule 22.14(c) provides that after the answer is filed, "the complainant may amend the complaint only upon motion granted by the Presiding Officer." 40 C.F.R. § 22.14(c). While no standard is provided in the Rules for determining whether to grant an amendment, it is generally held that administrative pleadings are "liberally construed and easily amended." *Port of Oakland and Great Lakes Dredge and Dock Company*, 4 E.A.D. 170, 205 (EAB 1992)(quoting *Yaffe Iron & Metal Co., Inc. v. U.S. EPA*, 774 F.2d 1008, 1012 (10<sup>th</sup> Cir. 1985)). The following standard, used in Federal court for amendment of pleadings, set

forth in *Foman v. Davis*, 371 U.S. 178, 181-182 (1962), is applied to administrative pleadings: “[i]n the absence of ... undue delay, bad faith or dilatory motive on the part of the movant ... undue prejudice to the opposing party ... [or] futility of amendment,” leave to amend pleadings should be allowed.

In this case, the parties *jointly* seek to amend the Complaint to correct the name used in the Complaint so as to properly identify one of the Respondents prior to settlement. As such, there is no evidence of undue delay, bad faith, dilatory motive, or undue prejudice on the part of either party.

Complainant has not submitted a proposed amended complaint, but given the nature of the amendment and the parties’ agreement to it, there is no need for filing an amended complaint or for an answer to be filed thereto.

Accordingly, the Joint Motion, dated January 8, 2009, is hereby **GRANTED** with respect to the request to correct the name of the Respondent identified in the Complaint as Florida Avenue Mid-Atlantic Petroleum Properties to be “Florida Avenue MAPP, LLC.” The allegations in the Complaint, and caption thereof, in this matter is hereby deemed to be amended so as to identify in all instances Florida Avenue MAPP, LLC and Mid-Atlantic Petroleum Properties, LLC as the Respondents.



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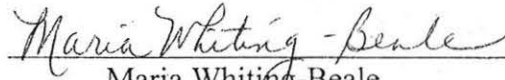
Susan L. Biro  
Chief Administrative Law Judge

Dated: January 9, 2009  
Washington, D.C.

In the Matter of Florida Avenue Mid-Atlantic Petroleum Properties, LLC and Mid-Atlantic Petroleum Properties, LLC, Respondents  
Docket No. RCRA-03-2008-0430

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Granting Motion To Amend Complaint To Correct Name of Respondent**, dated January 9, 2009, was sent this day in the following manner to the addressees listed below.

  
Maria Whiting-Beale  
Staff Assistant

Dated: January 9, 2009

Original And One Copy By Pouch Mail To:

Lydia A. Guy  
Regional Hearing Clerk (3RC00)  
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Philadelphia, PA 19103-2029

Copy By Pouch Mail To:

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