

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
ADAMAS CONSTRUCTION AND) COMPLAINANT’S RESPONSE TO
DEVELOPMENT SERVICES, PLLC) RESPONDENTS’ MOTION FOR
) EXTENSION OF TIME AND
) OPPOSITION TO COMPLAINANT’S
) MOTION FOR LEAVE TO AMEND
) THE COMPLAINT
)
)
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 RESPONSE TO RESPONDENTS’ MOTION FOR EXTENSION OF
TIME TO FILE PREHEARING EXCHANGE(S) AND OPPOSITION TO COMPLAINANT’S
MOTION FOR LEAVE TO AMEND THE 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 Response to Respondents’ Motion for Extension of
Time to File Prehearing Exchange(s) and Opposition of Complainant’s Motion for Leave to
Amend the Complaint.

1. Complainant filed its Motion for Leave to Amend the Complaint on December

17, 2019. In their Motion in Opposition, filed on December 19, 2019, Respondents fail to state a basis for opposing the amendment of the Complaint. As stated in Complainant's motion, 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 (10th 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).

Respondents do not argue that they would be prejudiced in any way by the filing of the Amended Complaint, because, in fact, they would not be prejudiced. Further, the amendment to the Complaint is necessary and appropriate given the fact that Complainant received a significant amount of new information both from Respondents and third parties *after* the Complaint was filed. As detailed in the Complaint, the Amended Complaint, and Complainant's Initial Prehearing Exchange, Complainant did not receive this information before the Complaint was filed because Respondents failed to comply with an information request issued pursuant to Clean Water Act Section 308, 33 U.S.C. § 1318. Because Respondents have not stated a sufficient basis for opposing the amendment to the Complaint, Complainant's Motion to Amend and leave to file the Amended Complaint should be granted.

2. Further, Respondents mis-characterize the communications with Complainant. As demonstrated by the emails attached to both Respondents' and Complainant's motions, Respondents' counsel never requested a copy of the Amended Complaint before it was filed with the Court. Complainant served Respondents' counsel both by electronic mail and regular mail,

as stated in the Certificate of Service for the motion to amend the Complaint. The email demonstrating service is also attached to Complainant's Motion for Request for Extension of Time to File a Rebuttal Prehearing Exchange, filed with the Court on December 19, 2019.

3. Finally, although Respondents' motion does not state this, Complainant does not oppose an extension of time for Respondents' to file their Prehearing Exchange. This was communicated to Respondents before the filing of their motion. *See* attached email correspondence.

4. For the reasons stated herein, Complainant believes the Court should grant Complainant's Motion for Leave to Amend the Complaint and leave to file the Amended Complaint. Complainant does not object to the extension of time to for Respondents' to file their Prehearing Exchange.

RESPECTFULLY SUBMITTED this 20th day of December 2019.

/s/ Sara Hertz Wu
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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 and postal mail to:

Attorney for Respondents Adamas Construction and Development Services PLLC and Nathan Pierce:

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Date: 12/20/2019

/s Sara Hertz Wu _____

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