

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
ROGER BARBER, d/b/a)	DOCKET NO. CWA-05-2005-0004
BARBER TRUCKING)	
)	
RESPONDENT)	

**ORDER GRANTING COMPLAINANT'S
SECOND MOTION TO AMEND THE COMPLAINT¹**

On September 23, 2005, The U.S. Environmental Protection Agency, Region V (“the Region” or “Complainant”) filed Complainant’s Motion to Amend the Complaint Instanter (“Motion to Amend”), which includes the proposed amended version of the Complaint, and served it on Roger Barber d/b/a/ Barber Trucking (“Respondent”).

Complainant’s proposed amendments are twofold: to address factual inconsistencies within the Complaint, and to correct “typographical error[s]” that incorrectly cite a regulation mentioned in Count I. Motion to Amend, Memorandum at 4, 7.

In Respondent’s Response for a More Definite Answer ¶¶ 38, 50, submitted September 9, 2005, Respondent challenges the accuracy of the Complaint’s allegations as to the number of loads of sewage sludge applied to the Site in question at certain times during the alleged violations. Respondent points out inconsistencies within the Complaint, such as where the Complaint alleges that the number of loads applied was 1,246 but then alleges 1,092 loads elsewhere in the Complaint. *Id.* “To address those inconsistencies and to correct the Complaint, Complainant now seeks to amend the Complaint.” Motion to Amend, Memorandum at 4. For example, where the current version of the Complaint alleges that 1,246 loads were applied, the proposed amendments would reduce the number alleged to 1,092, to be consistent with the other allegations.

Regarding the incorrect citation, the proposed amended Complaint would alter the cites in Paragraphs 48 and 49 of the Complaint. For instance, Paragraph 48 currently states, “Pursuant to 40 C.F.R. § 503.15(d), Respondent was required to comply with the vector attraction reduction requirements of 40 C.F.R. § 503(b)(9), (b)(10), or (b)(11) when applying each load of domestic septage [to] the Site.” The Complainant brings to our attention that, “due to typographical error,” it mistakenly cited (b)(11) rather than (b)(12), and would correct that mistake. Motion to Amend, Memorandum at 7.

¹ In an order issued August 25, 2005, I previously granted another motion of the Complainant to amend the Complaint.

Nevertheless, even with this proposed change, a minor defect remains with Complainant's cite. The actual cite should read "40 C.F.R. § 503.33(b)(9), (b)(10), or (b)(12)." The regulation at 40 C.F.R. § 503.15(d) clearly provides, "The vector attraction reduction requirements in § 503.33(b)(9), (b)(10), or (b)(12) shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site." Accordingly, the allegation that the Complainant intends to express in Paragraph 48 should read as follows: "Pursuant to 40 C.F.R. § 503.15(d), Respondent was required to comply with the vector attraction reduction requirements of 40 C.F.R. § 503.33(b)(9), (b)(10), or (b)(12) when applying each load of domestic septage to the Site." Likewise, the citation at the end of Paragraph 49 should be "40 C.F.R. § 503.33(b)(9), (b)(10), or (b)(12)."

Respondent has not filed any response to the Motion to Amend and the deadline to file such response has elapsed. *See* 40 C.F.R. §§ 22.16(b), 22.7(c).

As discussed in a previous order, it is well-established that, "As a general principle, 'administrative pleadings are liberally construed and easily amended.'" Order on Complainant's Motion to Strike Portions of Respondent's Answer and to Deem Factual Allegations Admitted or, in the Alternative, Motion for a More Definite Answer; Order Granting Amendment of the Complaint, at 5 (Aug. 25, 2005)² (citing *In re Lazarus, Inc.*, TSCA Appeal No. 95-2, 7 E.A.D. 318, 334 (EAB 1997)). Furthermore, a party who does not file a timely response to a motion waives any objection to the granting of the motion. 40 C.F.R. § 22.16(b).

For good cause shown, the Motion to Amend is GRANTED, and the amended version of the Complaint, which is attached to the Motion, is deemed accepted as of the date this Order Granting Complainant's Second Motion to Amend the Complaint is served. Regarding the remaining error of citing § 503(b) rather than § 503.33(b), there is no need for further amendment of the Complaint. This Order puts the parties on notice of the correct cite. Being that the amended Complaint makes substantive changes to the allegations, Respondent may file an amended answer within twenty (20) days from the date this Order is served, if he so chooses. *See* 40 C.F.R. § 22.14(c).

So ordered.³

Dated: October 19, 2005
Washington, D.C.

Barbara A. Gunning
Administrative Law Judge

² 2005 EPA ALJ LEXIS 45.

³ Still pending are my rulings on Complainant's Motion for Accelerated Decision on Liability and Complainant's Motion to Deem Specific Factual Allegations Admitted.