12/30/93

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Hudson Foods, Inc., OHSE Meat Products,	)	**CAA Docket No. VII-92-CAA-103**
	)	
	)	
Respondent	)	

ORDER GRANTING LEAVE TO AMEND ANSWER

Respondent's Motion for Leave to Amend Answer to Complaint is granted.

Respondent's Motion explained that its further research after filing its original Answer has led it to believe it has a defense to three of the six counts of the Complaint that its original Answer admits. Hence Respondent wants to amend its pleading for these three. For the remaining three counts, Respondent would leave in place its denial of two and admission of the other.

Complainant objected to Respondent's Motion. Complainant argued that it would thus be forced to prove the three counts that Respondent had initially admitted. Complainant asserted that Respondent's Motion came roughly a year after Respondent had filed its original Answer, a year during which Complainant has been preparing its case in reliance on that Answer.

Complainant contended further that some of Respondent's new defenses were really arguments for mitigation of a sanction, rather than arguments for denial of the commission of any violation. Additionally Complainant objected to Respondent's reference to settlement negotiations. Finally, Complainant noted that Respondent's original Answer was filed by counsel, not pro se.

Respondent's Motion for Leave to Amend Answer is nonetheless granted. The general principle is that leave to amend pleadings will be granted liberally, absent such factors as bad faith or significant prejudice to the opposing party.[1] No such special factor exists in this case.

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[1] See generally 27 Federal Procedure, Lawyer's Edition § 62:262 (1984).

The additional work for Complainant in preparing its proof for the three counts now to be contested fails to constitute a prejudice sufficient to warrant denial of Respondent's Motion. Although Respondent moved to amend a year after filing its original Answer, no hearing date has yet been set in this case, so that Complainant is under no time pressure in preparing its proof. Moreover, this additional preparation of proof should not involve any major undoing of preparatory work already completed, but rather simply an expansion of Complainant's case-in-chief.

As to whether Respondent's new defenses are actually defenses against the charges of violation as opposed to arguments in mitigation, the defenses are plausible enough that Respondent is entitled to have them tested as defenses. As for Respondent's reference to settlement negotiations, Respondent's Motion satisfactorily supports its request without utilization of these references.

Lastly, it is true that Respondent has been represented by counsel throughout this proceeding. Nevertheless, Respondent's arguments in support of its proposed amendments are strong enough to justify granting the Motion. The interests of justice will be more effectively served by allowing Respondent's new defenses for the three counts of the Complaint to be reviewed on their substantive merits.

Thomas W. Hoya
Administrative Law Judge

Dated: December 30, 1993

In the Matter of Hudson Foods, Inc., OHSE Meat Products, Respondent
Docket No. VII-92-CAA-103

Certificate of Service

I certify that the foregoing **Order Granting Leave to Amend Answer**, dated December 30, 1993, was sent this day in the following manner to the addressees listed below.

Original by Regular Mail to:

Venessa R. Cobbs
Regional Hearing Clerk
U.S. EPA
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Kansas City, KS 66101

Copy by Regular Mail to:

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Maria Whiting

Maria Whiting
Legal Staff Assistant

Dated: December 30, 1993