

**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of the Alleged Violations of Article 17 of the Environmental Conservation Law ("ECL") and Parts 612-614 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"),

**RULING ON MOTION  
TO AMEND THE  
COMPLAINT**

Index No. 08-69  
R9-20080609-38

- by -

**L-S AERO MARINE INC.,**

Respondent.

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Appearances of Counsel:

- Alison H. Crocker, Deputy Commissioner and General Counsel (Teresa J. Mucha of counsel), for staff of the Department of Environmental Conservation
- No appearance for respondents

PROCEEDINGS

Staff of the Department of Environmental Conservation ("Department") commenced this administrative enforcement proceeding by service of an August 27, 2008, notice of hearing and complaint upon respondent L-S Aero Marine Inc. The notice of hearing and complaint was served by certified mail, return receipt requested, and received by L-S Aero Marine on September 9, 2008, thereby completing service (see 6 NYCRR 622.3[a][3]).

The complaint alleges that based upon inspections conducted in September 2006 and July 2008, L-S Aero Marine violated various regulations governing petroleum bulk storage ("PBS") facilities at its PBS facility located in Bemus Point, Chautauqua County. Among the violations charged is L-S Aero Marine's failure to renew its facility's PBS registration, which

expired on August 17, 2007. To date, L-S Aero Marine has not filed an answer to the complaint.

By motion dated November 20, 2009, Department staff moves to amend the complaint to add L-S Aero Marine's president, David Lawson, as an additional respondent and for permission to serve the amended complaint upon Mr. Lawson. Staff alleges that Mr. Lawson should be joined as a respondent based upon his direct personal involvement in the operations of L-S Aero Marine and his ability to control the actions of the corporation which led to the violations charged in this proceeding. Attached to the motion is the amended complaint staff proposes to serve.

Although Department staff's motion to amend the complaint was served upon Mr. Lawson in his individual capacity and as president of L-S Aero Marine, no response to staff's motion has been filed by either Mr. Lawson or L-S Aero Marine.

#### DISCUSSION

Under the Department's Uniform Enforcement Hearing Procedures (6 NYCRR part 622 [Part 622]), a party may amend its pleading once without permission at any time before the period for responding expires (see 6 NYCRR 622.5[a]). Thereafter, consistent with the CPLR, a party may amend its pleading at any time prior to the final decision of the Commissioner by permission of the Administrative Law Judge ("ALJ") or the Commissioner, and absent prejudice to the ability of any other party to respond (see 6 NYCRR 622.5[b]). Where, as here, no ALJ has been assigned to the case, the motion is made to the Chief ALJ (see 6 NYCRR 622.6[c][1]).

Pursuant to the CPLR, a party may amend its pleading at any time by leave of court or by stipulation of all parties (see CPLR 3025[b]). Leave to amend shall be freely given upon such terms as may be just, including the granting of continuances (see id.).

Except where otherwise prescribed by law or order of the court, an answer or reply to an amended pleading is required if an answer or reply is required to the pleading being amended (see CPLR 3025[d]). Service of such an answer or reply shall be made within twenty days after service of the amended pleading to which it responds (see id.). Pursuant to Part 622, a respondent

has twenty days after receipt of the amended pleading to serve an answer (see 6 NYCRR 622.4[a]).

On this motion, Department staff seeks leave to amend its complaint to add Mr. Lawson as a respondent, based upon Mr. Lawson's alleged personal involvement in the violations, a potentially viable theory of personal liability for a corporate officer. Staff asserts that no party would be prejudiced if its motion is granted because bringing Mr. Lawson into the case as an additional respondent will not change the theory of the case, no hearings are presently scheduled, no discovery has taken place, no statement of readiness for an adjudicatory hearing has been filed, and respondents will have an ample opportunity to respond to the amended complaint.

No party filed submissions opposing Department staff's motion. Thus, no prejudice is argued, nor is any prejudice apparent. The motion, which was made prior to the filing of a statement of readiness for adjudicatory hearing or any other motion practice, is brought on sufficiently early in the pleading stage to allow each party an adequate opportunity to respond to staff's allegations. Accordingly, Department staff's motion should be granted.

#### RULING

Department staff's motion for leave to amend the complaint in the above captioned proceeding to add David Lawson as an additional respondent is granted. Department staff shall serve the amended complaint upon all parties pursuant to 6 NYCRR 622.3(a)(3). All parties shall have twenty (20) days after receipt of the amended complaint to file an answer, unless such time to answer is extended by Department staff or by a ruling of the ALJ.

\_\_\_\_\_/s/\_\_\_\_\_  
James T. McClymonds  
Chief Administrative Law Judge

Dated: December 17, 2009  
Albany, New York