

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

In the Matter of the Alleged Violations
of Article 17 of the New York State
Environmental Conservation Law and Title
6 Part 613 of the Official Compilation
of Codes, Rules and Regulations of the
State of New York,

- by -

**B.L.K. LALL & SONS, INC., and
CECILIA N. MERRILL,**

Respondents.

**RULING ON
MOTION TO
AMEND THE
COMPLAINT**

DEC Case No.
R5-20160413-
2202

PBS No. 5-
464384

January 30,
2019

Appearances of Counsel:

-- Thomas S. Berkman, Deputy Commissioner and General
Counsel (Scott Abrahamson, Assistant Regional Attorney, 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 a January 11, 2018, notice of hearing
and complaint upon respondent B.L.K. Lall & Sons, Inc. (B.L.K.)
The notice of hearing and complaint was personally served on
respondent B.L.K. on January 18, 2018, pursuant to Business
Corporation Law § 306 (see 6 NYCRR 622.3[a][3]; see also
Affidavit of DOS Service dated January 18, 2018).

The complaint alleges that respondent B.L.K. is liable
for multiple violations of 6 NYCRR part 613 that staff observed
on March 10, 2016, at a petroleum bulk storage (PBS) facility
owned by respondent and located at 102 West Main Street,
Chateaugay, New York 12920 (Town of Chateaugay, Franklin

County). Respondent B.L.K. failed to file an answer to the January 11, 2018 complaint or appear at a pre-hearing conference scheduled for February 20, 2018.

By notice of motion dated December 10, 2018, Department staff moves to amend the complaint to add Cecilia N. Merrill as a respondent and to add additional violations and penalties based upon an inspection of the facility conducted on October 23, 2018. Attached to the motion is the amended complaint staff proposes to serve (see Affirmation of Assistant Regional Attorney Scott Abrahamson dated December 10, 2018, Exh 3).

Although Department staff's motion to amend the complaint was served upon respondents, respondents have not filed a response.

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 Cecilia N. Merrill as a respondent and to add additional violations and penalties based upon an inspection of the facility staff conducted on October 23, 2018. Staff asserts that respondents will not be prejudiced if its motion is granted because respondents had the opportunity to oppose the motion, and will have the opportunity to answer the amended complaint if the motion is granted.

Respondents filed no 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 respondents 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 is granted. Department staff shall serve the amended complaint upon respondent B.L.K. Lall & Sons, Inc., pursuant to 6 NYCRR 622.6(a)(1), and upon respondent Cecilia N. Merrill pursuant to 6 NYCRR 622.3(a)(3). Respondents 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: January 30, 2019
Albany, New York