

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

In the Matter of the Alleged Violations
of Article 17 of the 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., GURU
PETROLEUM, INC., BHAGWANTVIR SINGH
JOHAL, and CECILIA N. MERRILL,**

Respondents.

**RULING ON MOTION
TO FURTHER AMEND
THE COMPLAINT**

DEC Case No.
R5-20160413-2202

PBS No. 5-464384

August 1, 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

This is the second motion brought by staff of the
Department of Environmental Conservation (Department) to amend
the complaint in this matter.

On January 18, 2018, Department staff personally
served a notice of hearing and complaint upon respondent B.L.K.
Lall & Sons, Inc. (B.L.K.) pursuant to Business Corporation Law
§ 306 (see 6 NYCRR 622.3[a][3]; see also Affidavit of DOS
Service dated January 18, 2018).

The January 2018 complaint alleged 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 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 complaint or appear at a pre-hearing conference.

By notice of motion dated December 10, 2018, Department staff moved to amend the complaint to add Cecilia N. Merrill as a respondent and to add additional violations and penalties based upon a subsequent inspection of the facility, which was conducted on October 23, 2018 (see Affirmation of Assistant Regional Attorney Scott Abrahamson dated December 10, 2018).

On January 30, 2019, the undersigned Chief Administrative Law Judge (ALJ) granted Department staff's motion for leave to amend the complaint. Department staff was directed to serve the amended complaint upon respondent B.L.K. pursuant to 6 NYCRR 622.6(a)(1), and upon respondent Merrill pursuant to 6 NYCRR 622.3(a)(3). (See Ruling on Motion to Amend the Complaint, January 30, 2019.)

Department staff served the amended complaint on respondent B.L.K. on February 21, 2019, and on respondent Merrill on February 7, 2019 (see Affirmation of Assistant Regional Attorney Scott Abrahamson: Staff's Second Motion for Permission to Amend Complaint dated June 3, 2019, at 2 [June 2019 Affirm]). The period for respondents to answer the amended complaint has since expired.

On May 6, 2019, counsel for B.L.K. provided Department staff with a "Lease Agreement" between B.L.K. and Guru Petroleum, Inc., that appeared to involve the facility (June 2019 Affirm at 2). Additionally, Department staff interviewed a potential witness who identified Bhagwantvir Singh Johal as the "day-to-day manager" of the facility (id.).

By notice of motion dated June 4, 2019, Department staff moves to further amend the amended complaint to add Johal and Guru Petroleum as respondents. Attached to the motion is the second amended complaint staff proposes to serve (see June 2019 Affirmation, Exhibit 2).

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 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 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 will be made within 20 days after service of the amended pleading to which it responds (see id.). Pursuant to Part 622, a respondent has 20 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 the complaint for a second time to add Bhagwantvir Singh Johal and Guru Petroleum, Inc. as respondents. Department staff asserts that respondents will not be prejudiced if the 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. Prejudice is neither argued nor apparent. The motion was made prior to the filing of a statement of readiness for adjudicatory hearing or any other motion practice and, thus, was brought on sufficiently early in the pleading stage to allow respondents adequate opportunity to respond to staff's allegations. Accordingly, Department staff's motion should be granted.

With respect to service of the second amended complaint, I note that Department staff has already served respondents B.L.K and Merrill using a method of service consistent with service of process. Accordingly, service of the second amended complaint on those respondents should be done pursuant to 6 NYCRR 622.6(a)(1) (service of papers). With respect to respondents Johal and Guru Petroleum, service of a second amended notice of hearing and the second amended complaint should be done using a method for service of process under 6 NYCRR 622.3(a)(3).

RULING

Department staff's motion for leave to further amend the amended complaint in the above captioned proceeding is granted. Department staff shall serve the second amended complaint upon respondents B.L.K. Lall & Sons, Inc. and Cecilia Merrill pursuant to 6 NYCRR 622.6(a)(1). Department staff shall service a second amended notice of hearing and the second amended complaint upon respondents Bhagwantvir Singh Johal and Guru Petroleum, Inc. pursuant to 6 NYCRR 622.3(a)(3). All respondents will 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: August 1, 2019
Albany, New York

TO: (Via FIRST CLASS MAIL and EMAIL)

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