

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged Violation of Articles 17 and 27 of the Environmental Conservation Law of the State of New York (“ECL”) and Parts 360 and 750 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”),

**RULING**

DEC CASE NO.  
9-20091103-55  
FILE NO. 09-78

-by-

**DONALD CASE AND DON CASE AUTO PARTS,**

Respondent.

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Procedural History

Respondent **DONALD CASE AND DON CASE AUTO PARTS** (“respondent”) was served with a notice of motion to amend complaint on May 21, 2015 to include additional violations of Articles 17 and 27 of NYCRR related to the facility located at 5433 Narrows Road, Little Valley, New York (“facility”). Respondent was served with a complaint on or about March 9, 2015 alleging one violation for the failure to submit the 2013 mandatory Vehicle Dismantling Annual Report for the facility. No answer was served. Department staff conducted a review of the regional files for the facility and found additional violations related to the facility in question. Region 9 staff detected violations during inspections of the facility on or about October 17, 2007, November 6, 2008 and August 4, 2011. After efforts made to resolve alleged violations at the facility failed, Department staff seeks to amend the complaint to pursue all alleged violations in one proceeding. In addition to including additional violations, staff seeks to increase the penalty being sought for the violations.

Applicable Regulatory Provision

Section 622.5, Amendment of pleadings

(a) A party may amend its pleading once without permission at any time before the period for responding expires or, if no responsive pleading is required, at least 20 days prior to commencement of the hearing.

(b) 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.

### Findings of Fact on the Motion

1. Respondent Donald Case and/or Don Case Auto Parts operates/operated a facility at 5433 Narrows Road, Little Valley, New York (see Affirmation of Jennifer Dougherty, Esq. dated May 21, 2015).
2. Respondent was served with a complaint on or about March 9, 2015 alleging a violation for failure to submit the 2013 mandatory Vehicle Dismantling Annual Report for the facility (see Motion to Amend Complaint dated May 21, 2015 and complaint dated March 9, 2015).
3. Respondent had not served an answer to the March 9, 2015 complaint.
4. Subsequent to the service of the March 9, 2015 complaint, additional violations related to the respondents and facility were identified by Department staff.

### Discussion

A party may amend its pleading once without permission at any time before the period for responding expires or, if no responsive pleading is required, at least 20 days prior to commencement of the hearing. Thereafter, consistent with the CPLR, pleadings may be amended 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]).

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.).

Respondents have not served an answer to the complaint, which alleged one violation related to the facility. Department staff has requested to amend the complaint prior to the final decision of the Commissioner as the hearing in this matter was adjourned by Department staff. Respondents will not be prejudiced if the complaint is amended to include additional alleged violations related to the same facility, provided respondents are given the opportunity to file an answer to the amended complaint.

### Ruling

Based upon the foregoing:

1. Department staff's motion for leave to amend the complaint against respondents to include additional violations and to increase the penalty requested is granted;

2. Department staff shall serve the amended complaint upon Donald Case individually and on behalf of Don Case Auto Parts pursuant to 6 NYCRR 622.3(a)(3);
3. All parties shall have twenty (20) days after service of the amended complaint upon them to file an answer, unless the time to answer is extended by Department staff or by a ruling of the ALJ.

\_\_\_\_\_/s/\_\_\_\_\_  
Molly T. McBride  
Administrative Law Judge

Dated: Albany, New York  
December 7, 2015