

STATE OF NEW YORK:
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violation
of Article 17 of the Environmental
Conservation Law and Title 6 of the
Official Compilation of Codes, Rules and
Regulations of the State of New York by:

**ALJ Ruling: Staff's Petition
to Amend and Sever**

**Case No. 3-047759
(409 Main Street
New Paltz)**

**ExxonMobil Oil Corporation
and Sammy El Jamal,**

Respondents.

Background

In 2002, New York State Department of Environmental Conservation (DEC or Department) staff issued 23 virtually identical notices of hearing and complaints to parties including the respondents for alleged violations of Environmental Conservation Law (ECL) § 17-1009 and § 612.2 of Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR) for late filing of registrations for bulk petroleum storage facilities. Among a number of rulings made in September 2002, I had consolidated these cases in the interest of economy. Based upon information received pursuant to discovery requests made upon the respondents, the Department staff has determined to amend its complaint concerning this particular facility located at 409 Main Street in New Paltz, New York and operated by respondent Sammy El Jamal.

Department staff alleged in its petition that respondent ExxonMobil submitted an incorrect or incomplete application to register this facility on March 26, 2002 based upon an inaccurate identification of the operator. Staff maintain that respondent El Jamal has operated the facility without a valid and current registration for an undisclosed period of time. In addition, in its petition, staff allege, *inter alia*, that the respondents have violated a number of other regulations concerning tightness testing, leak detection, improper tank closure, and spills. It is these allegations that serve as the bases for staff's motion to amend the complaint and sever this matter from the 22 other consolidated cases.

Staff's petition is dated December 12, 2003 and was received in the Office of Hearings and Mediation Services on December 15, 2003. An inquiry on December 30, 2003 I made of staff and the representatives for the respondents asking whether the respondents oppose staff's motion went unanswered and I have not received any papers in response to staff's petition.

Discussion and Conclusion

Section 622.5(b) of 6 NYCRR provides that "[c]onsistent 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.” Rule 3025(b) of the CPLR states that “[I]f leave [to amend] shall be freely given upon such terms as may be just . . .” Because staff has discovered information that provides the bases for allegations of additional and related violations, amendment of the complaint is appropriate. This proceeding is still in the initial stages, as discovery has not been completed and no statement of readiness filed. Thus, no prejudice will result as a result of this amendment. Finally, the respondents have not opposed staff’s request to amend. Therefore, staff’s motion to amend is granted.

With respect to severance, I consolidated the 23 cases because the pleadings indicated an identity that made such a determination sensible. However, in light of the fact that staff is amending its complaint to allege a number of additional claims against these respondents, the inclusion of this case with the 22 other matters for which late registration is the sole claim is no longer appropriate. And, as noted above, the respondents have not registered any opposition to staff’s request for severance. Accordingly, staff’s motion for severance of this matter is granted.

Staff’s petition to amend and sever is granted and staff is directed to serve the amended complaint by February 20, 2004.

Dated: Albany, New York
January 14, 2004

_____/s/_____
Helene G. Goldberger
Administrative Law Judge

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