

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

In the Matter of the Alleged Violations
of the Environmental Conservation Law
Article 17 and Parts 612, 613 and 614 of
Title 6 of the Official Compilation of
Codes, Rules and Regulations of the
State of New York,

- by -

**MARIAM PETROLEUM INC., TARIQ
MAHMOOD, and NAEEM MAHMOOD,**

Respondents.

**RULING ON
MOTION TO
AMEND THE
COMPLAINT**

DEC File No.
R4-2013-
0409-53

Appearances of Counsel:

- Edward F. McTiernan, Deputy Commissioner and General Counsel (Dusty Renee Tinsley 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 9, 2013, notice of hearing and complaint upon respondents Mariam Petroleum Inc., Tariq Mahmood, and Naeem Mahmood. In seven causes of action, the complaint alleges multiple violations of the petroleum bulk storage (PBS) facility regulations at respondents' PBS facility located at 585 Broadway, Schenectady, New York. The charges arose from an inspection of respondents' facility conducted by Department staff in May 2013.

One of the respondents filed an answer dated September 10, 2013, with the Department. Counsel for the Department notes, however, that is not possible to discern which respondent signed the answer (see Tinsley Affirmation [9-25-15] ¶ 4).

By letter dated August 25, 2015, Department staff moves to amend the complaint to (1) add additional charges for violations arising from an inspection conducted in January 2012, and (2) remove Tariq Mahmood as a respondent. In its proposed amended complaint attached to its letter motion, Department staff seeks a civil penalty in the same amount as was sought in the 2013 complaint. Staff also seeks to amend the notice of hearing.

On August 25, 2015, Department staff served its motion to amend the complaint with attached amended notice of hearing and amended complaint on all respondents by certified mail, return receipt requested. Although all three respondents received staff's motion (as evidenced by copies of the signed and returned green cards attached to staff's affidavit of service), no response to staff's motion has been filed by any respondent.

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 complaint to serve an answer (see 6 NYCRR 622.4[a]).

On this motion, Department staff asserts that if the motion is granted, respondents will have an opportunity to answer the amended complaint and engage in discovery. Staff also asserts that the civil penalty amount sought remains the same, and respondent Tariq Mahmood will benefit from being removed as a respondent. Accordingly, staff argues that respondents will not be prejudiced by amending the complaint.

Respondents filed no submissions opposing Department staff's motion. Thus, no prejudice is argued, nor is any prejudice apparent. Respondents will have the opportunity to answer the amended complaint and fully participate in adjudicatory proceedings in their defense. Accordingly, Department staff's motion to amend the complaint should be granted.

Staff's motion to amend the notice of hearing shall also be granted. In addition, the amended notice of hearing and complaint should be served upon Mariam Petroleum Inc. and Naeem Mahmood pursuant to 6 NYCRR 622.3(a)(3). Ordinarily, an amended notice of hearing would not be necessary when serving an amended complaint, unless a hearing was actually being scheduled. Moreover, assuming personal jurisdiction was previously obtained over a respondent, an amended complaint ordinarily constitutes an "intermediate" paper to which the service requirements of 6 NYCRR 622.6(a), not section 622.3(a)(3), apply (see Siegel, NY Prac § 231 at 396 [5th ed 2011]).

However, in this case, staff counsel indicates that the Department's file on this matter contains no certified mail receipts or domestic return receipt cards associated with service of the August 2013 notice of hearing and complaint and, as noted above, it is not possible to determine which of respondents filed the September 2013 answer (see Tinsley Affirmation ¶¶ 4, 5). Accordingly, to assure personal jurisdiction over respondents Mariam Petroleum Inc. and Naeem Mahmood is obtained, staff is hereby directed to serve the amended notice of hearing and complaint upon respondents pursuant to 6 NYCRR 622.3(a)(3).

RULING

Department staff's motion for leave to amend the notice of hearing and complaint in the above captioned proceeding is granted.

Department staff shall serve the amended notice of hearing and amended complaint upon respondents Mariam Petroleum Inc. and Naeem Mahmood 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.

Respondent Tariq Mahmood shall be removed from the caption in any further proceedings.

/s/

James T. McClymonds
Chief Administrative Law Judge

Dated: September 25, 2015
Albany, New York