

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

In the Matter of the Alleged Violations
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,

RULING

DEC File No.
R2-20040405-88

- by -

SUMMIT TRANSPORTATION INCORPORATED,

Respondent.

Staff of the New York State Department of Environmental Conservation (Department) commenced this administrative enforcement proceeding against respondent Summit Transportation Incorporated by service of a notice of hearing and complaint, both dated April 12, 2004. By motion dated May 18, 2007, Department staff moved to amend the complaint. Staff states that it had engaged in prolonged negotiations with respondent but the parties were unable to reach settlement. Staff now intends to proceed to hearing and moves to amend its complaint to add two new causes of action and to reflect respondent's current name.

Pursuant to section 622.5(b) of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), "[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."¹ In accordance with CPLR 3025(b), pleadings may be amended with leave at any time and "[l]eave shall be freely given upon such terms as may be just."

¹Note that prior to the expiration of a respondent's time to serve an answer, Department staff may amend the complaint once without permission (see 6 NYCRR 622.5[a]). Further, pursuant to 6 NYCRR 622.4(a), staff may extend the time to answer. Here, staff's motion does not state whether respondent's time to answer has expired. Nevertheless, because staff has sought permission to amend its complaint, I will assume for the purpose of this ruling that the time to answer has expired.

Department staff included a proposed amended complaint as an attachment to its motion. Generally, the proposed amendments supplement staff's factual allegations and cite additional provisions of law and regulation. The proposed changes are consistent with staff's stated purpose of adding two new causes of action² and referencing respondent's current name. The motion was on notice to respondent and respondent has not filed an objection or other response with this office. Additionally, consistent with CPLR 3025(d), respondent will be afforded the opportunity to answer the amended complaint.

In light of the foregoing, I conclude that staff's proposed amendment to the complaint is consistent with the CPLR and will not prejudice respondent. Therefore, Department staff's motion is granted.

_____/s/_____
Richard A. Sherman
Administrative Law Judge

Dated: June 4, 2007
Albany, New York

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² Note that, as proposed, the second and third causes of action are identical. This appears to be an oversight as staff's papers indicate the third cause of action is intended to charge failure to immediately contain the discharge. Staff may correct this error prior to service of the amended complaint.