

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

In the Matter of the Alleged Violations of Article 17 of the Environmental Conservation Law ("ECL") and Parts 612-614 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"),

**RULING ON MOTION
TO AMEND THE
COMPLAINT**

DEC File No. 09-88
R9-20091224-67

March 29, 2011

- by -

WHITE ARROW SERVICE STATIONS, INC.,

Respondent.

Appearances of Counsel:

-- Steven C. Russo, Deputy Commissioner and General Counsel (Teresa J. Mucha of counsel), for staff of the Department of Environmental Conservation

-- Carl Hasselback, representative for respondent White Arrow Service Stations, Inc.

PROCEEDINGS

Staff of the Department of Environmental Conservation ("Department") commenced this administrative enforcement proceeding by service of a June 24, 2010, notice of hearing and complaint upon respondent White Arrow Service Stations, Inc. The notice of hearing and complaint was personally served upon respondent on July 1, 2010 (see 6 NYCRR 622.3[a][3]).

The complaint alleges various violation of the regulations governing petroleum bulk storage (PBS) facilities for a gas station owned by respondent located at 3958 Lockport-Olcott Road, Lockport, New York. Respondent filed an answer to the complaint on July 21, 2010.

Department staff filed an October 12, 2010, amended statement of readiness for adjudicatory hearing with the Department's Office of Hearings and Mediation Services, and the matter was assigned to Administrative Law Judge (ALJ) Helene G. Goldberger. ALJ Goldberger conducted a settlement conference with the parties on December 9, 2010. When the settlement conference failed to produce a settlement, ALJ Goldberger returned the matter to the undersigned Chief ALJ for reassignment.

While the matter was awaiting reassignment, Department staff moved to amend the complaint by motion dated February 23, 2011. Department staff seeks to amend the complaint to add Carl Hasselback, president of respondent, as an additional respondent, to increase the penalty sought for the alleged violations from \$5,600 to \$15,295, and for permission to serve the amended complaint upon Mr. Hasselback. Staff alleges that Mr. Hasselback should be joined as a respondent based upon his direct personal involvement in the operations of respondent and his ability to control the actions of the corporation which led to the violations charged in this proceeding. Staff also seeks to increase the penalty sought to bring it into line with the Department's penalty guidance policies and enforcement goals. Attached to the motion is the amended complaint staff proposes to serve.

Department staff's motion to amend the complaint was served upon Mr. Hasselback in his individual capacity and as president of respondent White Arrow Service Stations, Inc. No objection or any other response to staff's motion has been filed by either Mr. Hasselback or respondent White Arrow Service Stations, Inc.

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

On this motion, Department staff asserts that no party would be prejudiced if its motion is granted because bringing Mr. Hasselback into the case as an additional respondent and increasing the penalty will not change the theory of the case, no hearings are presently scheduled, and respondents will have an ample opportunity to respond to the amended complaint and engage in additional discovery should they wish to do so.

No party filed submissions opposing Department staff's motion. Thus, no prejudice is argued, nor is any prejudice apparent. The motion is brought on sufficiently early in the pleading stage to allow each party an adequate opportunity to respond to staff's allegations. Accordingly, Department staff's motion should be granted.

RULING

Department staff's motion for leave to amend the complaint in the above captioned proceeding to add Carl Hasselback as an additional respondent and to increase the penalty sought for the violations alleged is granted. Department staff shall serve the amended complaint upon all parties pursuant to 6 NYCRR 622.3(a)(3). All parties 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.

/s/

James T. McClymonds
Chief Administrative Law Judge

Dated: March 29, 2011
Albany, New York