

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)	
In the Matter of:)	
)	
MultiStar Industries, Inc.)	EPCRA Appeal No. 05-01
)	
Docket No. 10-2004-0058)	
_____)	

ORDER DENYING REQUEST FOR INTERLOCUTORY REVIEW

On July 22, 2005, MultiStar Industries, Inc. (“MultiStar”) filed a request that the Environmental Appeals Board take interlocutory review pursuant to 40 C.F. R. § 22.29 of the July 11, 2005 order issued by Administrative Law Judge Carl C. Charneski (“ALJ”). The ALJ’s July 11 order denied MultiStar’s request for reconsideration of an earlier order, dated June 13, 2005, in which the ALJ granted accelerated decision in favor of U.S. EPA, Region 10 (the “Region”) on the Region’s complaint charging MultiStar with one violation of section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and six violations of section 312(a) of the Emergency Planning and Community Right-To-Know Act (“EPCRA”), 42 U.S.C. § 11022(a).

The ALJ’s June 13 order granted accelerated decision finding MultiStar liable on the alleged violations. The ALJ based his factual determinations largely on MultiStar’s statements in documents filed with the EPA, including pleadings in the case before the ALJ. The ALJ’s June 13 order did not assess a penalty for those violations but instead stated that a hearing will be scheduled for the purpose of determining the appropriate civil penalty.

The Environmental Appeals Board may undertake interlocutory appeal under 40 C.F.R. § 22.29(a) when the ALJ recommends the order for interlocutory review on the grounds that, among other things, the order “involves an important question of law or policy concerning which there is substantial grounds for difference of opinion.” 40 C.F.R. § 22.29(b)(1). In the present case, the ALJ’s July 11 order declined to recommend the June 13 order for interlocutory appeal. The ALJ specifically stated in the July 11 order that MultiStar failed to show that the June 13 order involves an important question of law or policy concerning which there is substantial grounds for difference of opinion. Where the ALJ has declined to recommend an order for interlocutory review, review by the Environmental Appeals Board must generally wait until the ALJ has issued the initial decision in the case. 40 C.F.R. § 22.29(c). However, the Board may undertake interlocutory appeal under section 22.29(c) in “exceptional circumstances” when the Board determines that “to delay review would be contrary to the public interest.” *Id.*

In the present case, MultiStar has failed to identify “exceptional circumstances” that would warrant granting interlocutory review of the ALJ’s June 13 or July 11 orders. MultiStar’s request for interlocutory review does not identify any alleged error in the ALJ’s rulings that could not be considered after the ALJ has ruled on the remaining issues in the case. Indeed, MultiStar has failed to identify specific documents or other evidence that would show error in the ALJ’s factual and legal conclusions set forth in the June 13 order. Instead, MultiStar raises a variety of policy issues that are most appropriately considered on appeal only after the ALJ has ruled on both liability and the amount of the penalty.¹

¹ We note that the form of MultiStar’s arguments pertaining to the size of its business, its efforts to comply with the law, and its efforts to cooperate with the Region are matters that the
(continued...)

MultiStar has also attached to its request copies of various correspondence sent during settlement discussions. As in all cases, we certainly encourage the parties to fully explore whether a settlement can be reached. However, matters raised in settlement are generally not admissible as evidence. *See* 40 C.F.R. § 22.22(a).

Accordingly, for the reasons stated above, we hereby deny MultiStar's request for interlocutory review of the ALJ's June 13 and July 11 orders.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: July 28, 2005

By _____ /s/
Kathie A. Stein
Environmental Appeals Judge

¹(...continued)
ALJ may consider in determining the amount of the penalty. We do not, however, express any view as to whether MultiStar has established a factual or legal basis for its arguments.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Request for Interlocutory Review, in the matter of MultiStar Industries, Inc., EPCRA Appeal No. 05-01, were sent to the following persons in the manner indicated:

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Postage Prepaid and
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Seattle, WA 98101

Dated: July 28, 2005

_____/s/
Annette Duncan
Secretary