

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of

AUTOMOTIVE FINISHES, INC.

Docket No. 5-EPCRA-96-013

Respondent

Judge McGuire

ORDER CLARIFYING STATUS OF ENFORCEMENT PROCEEDING
AND SETTING PREHEARING EXCHANGE SCHEDULE

By letter dated October 29, 1996, counsel for respondent, Automotive Finishes, Inc., advised that respondent had filed a petition for bankruptcy on June 18, 1996 in the United States Bankruptcy Court of the Eastern District of Michigan (Case No.96-48128).¹ Subsequently, by letter dated January 24, 1997, respondent notified counsel for the Environmental Protection Agency (EPA), that a stay order had been issued by the bankruptcy court and expressed confusion that EPA was continuing to pursue its Prehearing Exchange.

Assuming that respondent has filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code, 11 U.S.C. Sec. 362 (b) (4)², it is well-established that a proceeding seeking entry of a judgment is well within EPA's authority to enforce environmental laws and is therefore not stayed by respondent's filing of a bankruptcy petition. Hanlin Chemicals-West Virginia, Inc., IF&R-III-425-C; TSCA-III-651; EPCRA-III-091 (Initial Decision Judge Pearlstein, November 9, 1995). The ultimate enforcement of any penalty assessment resulting from this proceeding is a money judgment that is subject to the stay provisions of the bankruptcy code. Kovacs v. Ohio, 717 F.2d 984, 988 (6th Cir. 1983), aff'd. 469 U.S. 274(1985).

The legislative history of 11 U.S.C. Section 362(b)(4) supports this conclusion. "Where a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection..... or similar police or regulatory laws, or attempting to fix damages for violation of such law, the

action or proceeding is not stayed under the automatic stay." H.Rep No. 595, 95th Cong., 2nd Sess. 343, reprinted in 1978 U.S. Code Cong. & Adm. News 5787, 5963, 6299 (emphasis supplied); cited in Watervliet Paper Company, Inc., TSCA-V-C-098-88 (Order on Default Judge Harwood, August 21, 1989). Similarly, the legislative history of 11 U.S.C. section 362(b) (5) states that "the exception extends to permit an injunction and enforcement of an injunction, and to permit entry of a money judgment, but does not extend to permit enforcement of a money judgment." S. Rep. No. 989, 95th Cong., 2nd Sess. 52, reprinted in U.S. Code Cong. & Adm. News 5787, 5838 (emphasis supplied); Watervliet, Id.

In the event that EPA is successful in prosecuting this enforcement action against respondent and in obtaining a monetary penalty against it, EPA will be required to comport with the relevant bankruptcy rules relating to the satisfaction of creditors in the resolution of respondent's bankruptcy action.

Based on the above-cited authority, the enforcement action against respondent is hereby ORDERED TO PROCEED. The parties are thus advised that Prehearing Exchanges are to be completed no later than April 15, 1997.

Stephen J. McGuire
Administrative Law Judge

DATED: February 11, 1997
Washington, D.C.

Docket No. 5-EPCRA-96-013

CERTIFICATE OF SERVICE

I certify that the foregoing Order Clarifying Status of Enforcement Proceeding & Setting PHE Schedule, dated February 11, 1997, was sent in the following manner to the addressee's listed below:

Original by Pouch Mail to:

Jodi Swanson-Wilson
Regional Hearing Clerk
U.S. EPA, Reg. 5

77 W. Jackson Blvd.
Chicago, IL 60604

Copy by Certified Mail-Return Receipt Requested to:

Counsel for Complainant:

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Aurora M. Jennings
Legal Assistant
Office of Administrative Law Judges
Environmental Protection Agency
Washington, DC 20460

Dated: February 11, 1997
Washington, D.C.

¹ There is no documentation in the record relating to this bankruptcy filing other than respondent's assertion, through counsel, that such filing has taken place.

² For purposes of this order, it is assumed respondent has sought protection under Chapter 11 of the Bankruptcy Code. If not, respondent shall be afforded 10 days from receipt of this order to respond to any of the issues addressed herein.