



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
Von Roll America, Inc.,) Docket No. RCRA-05-2005-0009
)
RESPONDENT)
_____)

ORDER ON SECOND JOINT MOTION TO STAY PROCEEDINGS

By Joint Motion dated August 24, 2006, the parties move to stay this proceeding for an additional six months to complete their settlement negotiations.

The captioned action was initiated on June 23, 2005. After engaging in Alternative Dispute Resolution, the parties were not able to settle this matter, and it was assigned for litigation. The Prehearing Exchange was completed on January 17, 2006. On February 27, 2006, the parties filed a Joint Motion to Stay Proceedings, representing that the Complainant intended to file this action in Federal district court asserting the claims made in this administrative action under the Resource Conservation and Recovery Act (RCRA) as well as certain substantively identical claims to be made against Respondent under the Clean Air Act (CAA). By Order dated February 28, 2006, this Tribunal granted the parties a six month stay of all proceedings in this action.

However, the instant Motion and Status Reports filed thereafter suggest that, in fact, no Federal action has been instituted, despite the passage of some six months for that explicit purpose. Instead it appears that the parties have been engaged in settlement discussions which they represent as "very productive." The Motion indicates that the parties have entered into a tolling agreement in regard to the claims at issue. The parties request the second six month stay "to complete the negotiations" or to file the action in Federal court.

The authority to grant a stay is discretionary with the court. *Landis v. North American Co.*, 299 U.S. 248, 254-255 (1936) ("the power to stay proceedings is incidental to the power in every court to control the disposition of causes on its docket with economy of time and effort for itself, for counsel, and for litigants, which calls for the exercise of judgment, which must weigh competing interests and maintain an even

balance.”). A court generally may not grant a stay so extensive that it is “immoderate” in duration . . . “if a second stay is necessary . . . the petitioners must bear the burden . . . of making obvious the need.” *Id.* at 257.

There is no obvious or compelling reason to stay proceedings for a total of *one year* of settlement discussions, which can continue concurrently with the action proceeding toward hearing or trial. The parties have not set forth any justification as to why a time period shorter than six months would not be sufficient. However, in the interest of efficiency, conserving parties’ resources and encouraging the settlement of actions, the parties will be granted some time to complete settlement negotiations or to file the substitute action in Federal court.

Accordingly, good cause exists for the granting of a stay of three (3) months. The filing deadlines previously established in this case are hereby **STAYED until December 1, 2006**. The parties shall file Joint Status Reports monthly, on or before September 22, October 20, and November 24, 2006, unless either a Consent Agreement and Final Order is executed and filed or the Complaint has been filed in Federal court.

Susan L. Biro
Chief Administrative Law Judge

Dated: August 25, 2006
Washington, D.C.