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From: Keith Q. ONSDORFF Esq Phone #: 202 - 233 - 0122

Subject: In re John Violikis TOSCA 07-02

Motion to Stay Final Decision

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COMMUNICATIONS BOARD

No. _____

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUITJOHN P. VIDIKSIS,
Petitioner,

v.

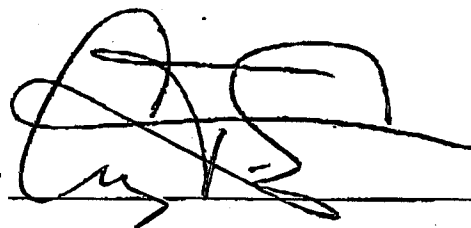
PETITION FOR REVIEW

ENVIRONMENTAL
PROTECTION AGENCY,
Respondent.

John P. Vidiksis, a resident of this circuit, hereby petitions this Court for review of the Final Decision and Order of the Environmental Appeals Board of the United States Environmental Protection Agency, dated April 22, 2009, sustaining the initial decision of the Administrative Law Judge finding that petitioner violated 40 C.F.R. part 745, subpart F, and assessing a civil penalty against petitioner in the amount of \$97,545.

Dated: May 15, 2009.

By



ANTHONY T. CASO, Cal. Bar No. 88561
Law Office of Anthony T. Caso
8001 Folsom Boulevard, Suite 100
Sacramento, California 95826
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E-Mail: tom@caso-law.com
Attorney for Petitioner

**BEFORE THE U.S. EPA
ENVIRONMENTAL APPEALS BOARD**

In Re: John P. Vidiksis

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Docket No: TSCA 07-02

MOTION TO STAY

FINAL DECISION

RECEIVED
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EPA
OFFICE OF GENERAL COUNSEL

Appellant, John P. Vidiksis, hereby moves for a Stay of the E.P.A., Environmental Appeals Board's Final Decision and Order, dated April 22, 2009, in order to allow for fully effective judicial review of this Final Agency action, pursuant to 5 U.S.C. §704.

In support of this motion, Appellant shall rely upon the attached certification of counsel.

Respectfully submitted,



Keith A. Onsdorff, Esq.
Pro Bono
Administrative Appeal Counsel
for Appellant
225 Windsor Avenue
Haddonfield, New Jersey 08033
(856) 428-3553

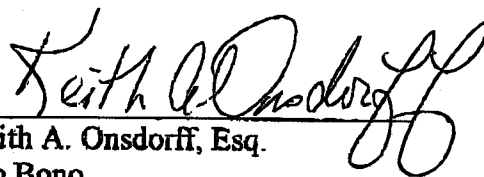
CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2009, I mailed by first class mail the original and five copies of the within moving papers to:

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board (MC 1103B)
Ariel Rios Building
1200 Pennsylvania Avenue. N.W.
Washington, D.C. 20460-0001

and one copy to

Donzetta Thomas, Esq. (3RC30)
U.S.E.P.A.
Region III
1650 Arch Street
Philadelphia, PA 19103



Keith A. Onsdorff, Esq.
Pro Bono
Administrative Appeal Counsel
for Appellant

CERTIFICATION OF COUNSEL

KEITH A. ONSDORFF, Esquire, acting as the administrative appellate counsel for Appellant, John Vidiksis, hereby certifies, as follows:

1. On May 15, 2009, John Vidiksis, through his judicial appellate counsel, Anthony T. Caso, filed a Petition for Review of the E.A.B.'s April 22, 2009 Final Decision and Order, in the U.S. Court of Appeals for the 11th Circuit, sitting in Atlanta, Georgia. (Copy attached hereto.)
2. Pursuant to Rule 18(a), Federal Rules of Appellate Procedure, ("FRAP") an Initial Motion for a Stay of an Agency's Final Action should be propounded to the Agency which issued the decision being appealed to the Circuit Court.
3. A review of the EPA's Consolidated Rules of Procedure ("CROP"), as well as the Environmental Appeals Board ("E.A.B.") Practice Manual, (June, 2004), does not disclose an express provision for a motion to stay the Final Decision of the E.A.B. cf. Motion for Reconsideration, 40 CFR §124.19(g). Nonetheless, CROP, Rule 22.4(a)(2) authorizes the E.A.B. to "... take all measures for the efficient, fair and impartial adjudication of issues arising in a proceeding." Thus, Rule 22.4(a)(2) provides full implicit authority for the E.A.B.'s issuance of a Stay on its Final Decision pending judicial review thereof.
4. Accordingly, in order to conform with the apparent mandate of FRAP Rule 18(a), Appellant has filed the within Motion for a Stay of the E.A.B.'s Final Decision and Order dated April 22, 2009.
5. This Motion for an Administrative Stay should be granted by the E.A.B. in order to preserve the Appellant's statutorily protected rights to effective judicial review of the EPA's final actions. Were the Agency to seek immediately to collect the proposed civil penalty in this matter, such a

judicial collection action would proceed in a federal District Court ("Trial Court"). See 31 U.S.C. §3717.

6. Should the E.A.B. not issue a Stay of its Final Decision and Order, Appellant could be made to defend an EPA trial court collection action simultaneously with his prosecution of the appeal now pending in the Circuit Court of Appeals. Such an untoward outcome could result in inconsistent judicial rulings. Furthermore, EPA's premature initiation of a trial court collection action would cause the Appellant to incur duplicative, and therefore unnecessarily excessive, litigation transaction costs. Finally, the conduct of two identical but simultaneous federal court actions would result in the inefficient allocation of limited judicial resources, contrary to EPA's statutory mandate to achieve the cost-effective, fair and efficient adjudication of contested cases.

See, e.g. 40 CRF §22.4.

DATE:

May 19, 2009



KEITH A. ONSDORFF, ESQ.