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ENVIR. APPEALS BOARD

Marian C. Hwang
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March 5, 2008

VIA OVERNIGHT DELIVERY

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
Colorado Building
1341 G Street, N.W., Suite 600
Washington, D.C. 20005

**Re: In re: Environmental Protection Services, Inc.
TSCA Appeal No. 06-01**

Dear Clerk:

Enclosed please find the original and six copies of an Emergency Motion to Stay Enforcement for filing in the above referenced matter. Please date-stamp one copy and return same in the self-addressed postage prepaid envelope also enclosed.

Please feel free to contact me with any questions you may have.

Very truly yours,


Marian C. Hwang

cc: Cheryl L. Jamieson, Esq.

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

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ENVIRONMENTAL APPEALS BOARD

In re:)
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Environmental Protection Services, Inc.)
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Docket No. TSCA-03-2001-0331)
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TSCA Appeal No. 06-01

**ENVIRONMENTAL PROTECTION SERVICES, INC.'S EMERGENCY MOTION TO
STAY ENFORCEMENT**

Environmental Protection Services, Inc. ("EPS"), by and through undersigned counsel, hereby move to stay the enforcement of the Final Decision and Order ("the Final Order") issued by the Environmental Appeals Board on February 15, 2008, pending the judicial review of the Final Order in the United States Court of Appeals for the District of Columbia Circuit, pursuant to 15 U.S.C. § 2615(a)(3) (2007). In support of this Motion, EPS states as follows:

1. On June 29, 2001, Region 3 of the United States Environmental Protection Agency ("USEPA") filed an administrative complaint against EPS for violating section 15 of the Toxic Substances Control Act, 15 U.S.C. § 2614. Specifically, USEPA alleged that EPS had failed to comply with regulations governing the storage, distribution, and disposal of polychlorinated biphenyls ("PCBs") at its facility in Wheeling, West Virginia. EPS disputed these allegations, and asserted certain affirmative defenses, including selective enforcement.

2. Following a series of administrative hearings, on March 7, 2006, Administrative Law Judge Carl C. Charneski ("ALJ") determined that EPS failed to comply with regulations governing the storage, distribution, and disposal of PCBs at its facility ("the Initial Decision"), and imposed a penalty against EPS in the amount of \$151,800.

3. On April 10, 2006, EPS appealed the Initial Decision to the Environmental Appeals Board (“the EAB”). On December 13, 2006, the EAB entertained the parties’ oral arguments, and on February 15, 2008, the EAB issued its Final Order. The EAB reversed in part the ALJ’s Initial Decision with regard to a storage violation on July 15, 1999 raised in Count I, and affirmed the Initial Decision as to the remainder of Count I, Counts II and III. The EAB reduced the penalty imposed against EPS to \$133,100.

4. The Final Order mandates that EPS pay the assessed penalty within 30 days (or by March 17, 2008).

5. On March 4, 2008, EPS filed a Petition for Review in the Court of Appeals for the District of Columbia Circuit, pursuant to 15 U.S.C. § 2615(a)(3) (2007), seeking review of the Final Order. See Petition for Review, attached and incorporated herein by reference as **Exhibit A**.

6. EPS seeks to stay the enforcement of the Final Decision and the penalty that has been assessed, pursuant to Federal Rule of Appellate Procedure 18 and local Circuit Rule 18, pending the Court of Appeals’ review.

7. EPS contends that a good faith basis exists for the filing of its Petition for Review in the Court of Appeals, and believes that there is a reasonable likelihood that EPS will be successful in its appeal.

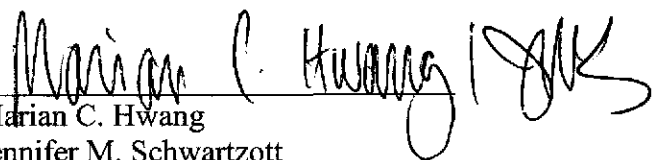
8. No prejudice will result to any party by staying the enforcement of this matter. This matter was initiated eight years ago; staying the enforcement and the assessment of the penalty for a few additional months will have no adverse impact on the parties.

9. EPS will be harmed if it is required to pay the penalty before its appeal is resolved.

10. If EPS is required to pay the assessed penalty before its appeal is resolved, it is possible that the USEPA would be required to return EPS' money in part or in full, to the extent EPS' appeal is successful, which could pose logistical and bureaucratic problems for the agency.

WHEREFORE, EPS respectfully requests the USEPA stay the enforcement of the Final Order, pending the Court of Appeals for the District of Columbia Circuit's review.

Respectfully submitted,


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*Counsel for Environmental Protection
Services, Inc.*

CERTIFICATE OF SERVICE

I, hereby certify, that on this 5th day of March, 2008, a copy of Environmental Protection Services, Inc.'s Emergency Motion to Stay Enforcement was served on the following parties via electronic and first-class mail:

Cheryl L. Jamieson
Senior Assistant Regional Counsel
U.S. EPA – Region 3
1650 Arch Street, Mail Code (3RC30)
Philadelphia, PA 19103

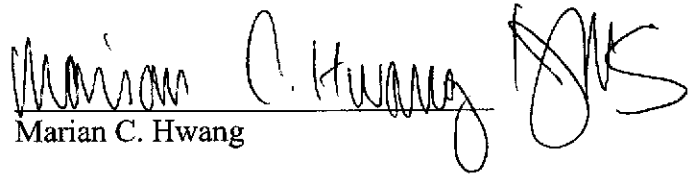

Marian C. Hwang

EXHIBIT A

**UNITED STATE COURT OF APPEALS
District of Columbia Circuit**

**ENVIRONMENTAL PROTECTION
SERVICES, INC.,**

Petitioner;

v.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,**

Respondent.

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Case No.: _____

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PETITION FOR REVIEW OF AN AGENCY DECISION

Notice is hereby given this 4th day of March, 2008, that Petitioner, Environmental Protection Services, Inc., hereby petitions the United States Court of Appeals for the District of Columbia Circuit for review of the order of the Respondent, United States Environmental Protection Agency, entered the 15th day of February 2008.

Respectfully submitted,



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Protection Services, Inc.*