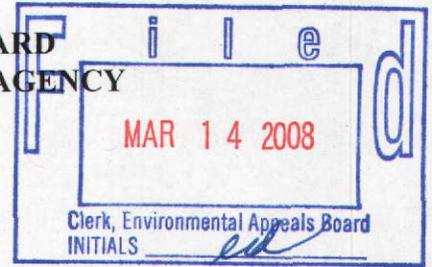


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



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

ORDER GRANTING UNOPPOSED MOTION FOR STAY OF ENFORCEMENT

On March 6, 2008, Appellant Environmental Protection Services, Inc. (“EPS”) filed an Emergency Motion to Stay Enforcement (“Motion”) of the February 15, 2008 Final Decision and Order (“Final Decision”) issued by the Environmental Appeals Board (“Board”) in the above-captioned proceeding. *See In re Environmental Protection Services, Inc.*, TSCA Appeal No. 06-01 (EAB Feb. 15, 2008), 13 E.A.D. _____. The EAB, in the Final Decision, imposed a \$133,100 penalty (“Penalty”) on EPS for violating section 15 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2614, by failing to comply with implementing regulations governing the storage, distribution, and disposal of polychlorinated biphenyls.

In its Motion, EPS informs the EAB that EPS has filed an appeal of the EAB’s Final Decision in the U.S. Court of Appeals for the District of Columbia Circuit (“Court of Appeals”) and requests that the Board “stay the enforcement of the Final Decision and the penalty that has been assessed” pending the Court of Appeal’s review. *See* Motion at 2; Exh. A.¹ In support of

¹EPS explains that it is requesting that the Board stay enforcement of the Final Decision pursuant to the Federal Rules of Appellate Procedure (the “Rules”). *See* Motion at 2. The Rules state, in relevant part, that the “[R]ules govern procedure * * * in proceedings in the courts of appeals for review or enforcement of administrative agencies, boards, commissions and officers of the United States.” Fed. R. App. P. 1. Rule 18 states that “[a]pplication for a stay of a

the Motion, EPS asserts that a stay of enforcement will not prejudice either EPS or the EPA, that EPS's payment of the Penalty would "harm" EPS, that EPS's federal appeal has a "reasonable likelihood" of success, and that a successful appeal by EPS would impose administrative inconvenience on EPA if the Agency were required to return Penalty monies to EPS. *See* Motion at 2-3. On March 12, 2008, Complainant U.S. EPA Region 3 ("Region") filed a response to EPS's Motion, in which the Region indicates that it does not oppose EPS's Motion but "respectfully reserves the right to recover any interest authorized by law on the stayed [P]enalty."

For good cause shown, the Board hereby grants EPS's Motion and, pending review of the Final Decision in the Court of Appeals, stays that aspect of the Final Decision that requires payment of the Penalty within thirty days. Should EPS not succeed in its appeal, the Penalty (plus any authorized interest) will be due within thirty days of the Court of Appeal's decision, unless the Court of Appeals prescribes a different deadline for payment or the parties agree otherwise.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: March 14, 2008

By: Anna L. Wolgast
Anna L. Wolgast
Environmental Appeals Judge

decision or order of an agency pending direct review in the court of appeals shall ordinarily be made in the first instance to the agency." Fed. R. App. P. 18. Rule 18 further provides that "motion for such relief may be made to the court of appeals or to a judge thereof, but the motion shall show that application to the agency for the relief sought is not practicable, or that application has been made to the agency and denied, with the reasons given by it for denial, or that the action of the agency did not afford the relief which the applicant requested." *Id.*

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Unopposed Motion for Stay of Enforcement in the matter of Environmental Protection Services, Inc., TSCA Appeal No. 06-01, were sent to the following persons in the manner indicated:

By First Class Mail
and Facsimile:

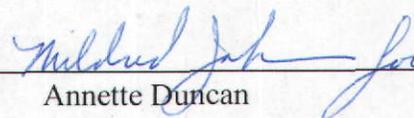
Marian C. Hwang
Miles & Stockbridge, P.C.
10 Light Street
Baltimore, MD 21202
Fax No.: (410) 385-3700

Edward L. Kropp
Jackson Kelly PLLC
1600 Laidley Tower
P.O. Box 553
Charleston, West Virginia 25322
Fax No.: (304) 340-1130

By Pouch Mail
and Facsimile:

Cheryl Lynn Jamieson
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103
Fax No: (215) 814-2601

Date: 3-14-08



Annette Duncan
Secretary