



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG.11
2012 OCT 25 A 11:53
REGIONAL CLERK HEARING

In the Matter of:
Valvo's Convenience & Gas, Inc., and Stephen M. Valvo, Respondents.
Docket No. RCRA-02-2011-7507
Dated: October 22, 2012

ORDER ON MOTION FOR EXTENSION OF TIME FOR HEARING DATE

The Complaint initiating this proceeding was filed on June 3, 2011. By Order dated May 10, 2012, the hearing in this matter was scheduled to commence on September 11, 2012, and then was rescheduled to commence on October 23, 2012, due to Complainant's motion to amend the Complaint and additional time needed for supplemental filings.

The parties reached a settlement of this matter and signed a Consent Agreement and Final Order ("CAFO"), which was signed by the Regional Judicial Officer on September 24, 2012.

On October 22, 2012, Complainant filed a Motion for Extension of Time for Hearing Date ("Motion"), requesting that the date for commencement of the hearing be extended to no earlier than the week of December 10, 2012. The Motion states that Respondents join in the request. Grounds stated in the Motion are that the court presiding in Respondents' bankruptcy case will be presented with a Stipulation and Order which is attached to the CAFO, and if the court rejects the Stipulation and Order, the CAFO will be null and void, as the parties agreed in the CAFO. In that event, the Motion states, the parties will need a hearing to resolve the claims in the Complaint.

The Rules of Practice governing this proceeding, 40 C.F.R. part 22, provide that "Any motion for an extension of time shall be filed sufficiently in advance of the due date so as to . . . allow the Presiding Officer . . . reasonable opportunity to issue an order." 40 C.F.R. § 22.7. The Motion is essentially a request for postponement of the hearing, and in that regard, the Rules provide, "No request for postponement of a hearing shall be granted except upon motion and for good cause shown." 40 C.F.R. § 22.21(c).

The Motion, filed in the afternoon of the day prior to commencement of the hearing, is untimely, and does not include an explanation as to why it was not filed earlier. In such a situation, it is appropriate to deny a request for postponement of the hearing. However, in the

circumstances of this case, where the parties have executed a CAFO but its effectiveness is conditioned on the decision of the bankruptcy court, this proceeding will be stayed.

Accordingly, this proceeding is hereby **STAYED** until December 7, 2012. In the event a fully executed CAFO resolving this matter is not filed beforehand, Complainant shall file a status report on or before **December 7, 2012**, advising as to the status of the CAFO.




M. Lisa Buschmann
Administrative Law Judge

**In the Matter of Valvo's Convenience and Gas, Inc., and Stephen M. Valvo,
Docket No. RCRA-02-2011-7507**

CERTIFICATE OF SERVICE

I hereby certify that true copies of this **Order on Motion for Extension of Time for Hearing Date**, issued on October 22, 2012, were sent to the following parties in the manner indicated:



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Legal Staff Assistant

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**Dated: October 22, 2012
Washington, DC**