



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

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In the Matter of:)
Juan Hernandez,) Docket No. TSCA-01-2012-0029
Respondent.)

ORDER DENYING COMPLAINANT'S MOTION TO STAY PROCEEDINGS

I. Background

On March 27, 2012, the Legal Enforcement Manager of the Office of Environmental Stewardship, U.S. Environmental Protection Agency Region 1 ("Complainant") filed a Complaint and Notice of Opportunity for Administrative Hearing ("Complaint") against Juan Hernandez ("Respondent"), alleging violations of Section 409 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. No. 102-550, §§ 1001-61, 106 Stat. 3672, 3897-927 (codified as amended in scattered sections of 15 & 42 U.S.C.), and federal regulations promulgated thereunder, entitled Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property, set forth in 40 C.F.R. Part 745, Subpart F (the "Disclosure Rule"). Complaint at 1. "Complainant seeks civil penalties pursuant to TSCA Section 16, 15 U.S.C. § 2615, which provides that violations of TSCA Section 409 are subject to assessment by Complainant of civil and/or criminal penalties. Complaint at 1-2.

Between April 26, 2012, and August 27, 2012, Respondent filed five requests for extensions of time in which to file a responsive pleading, all of which were granted by the presiding Regional Judicial Officer. The record indicates that during this period Respondent obtained counsel and the parties engaged in settlement negotiations. See Respondent's Fifth Motion for Extension of Time to Plead. The parties were evidently unable to resolve this matter by consent, and Respondent filed a timely Answer to the Complaint on October 5, 2012.

The Office of Administrative Law Judges received this case on October 22, 2012, and on October 23, 2012 letters inviting the parties to voluntarily participate in a judicially facilitated Alternative Dispute Resolution ("ADR") process to facilitate settlement. The letter requested that the parties accept or decline the offer by November 6, 2012. See 5 U.S.C. §§ 572, 575 (participation in alternative dispute resolution to resolve administrative controversies must be voluntary). Respondent indicated on November 6, 2012, that he would accept the offer to

participate in ADR. Complainant did not submit an acceptance or rejection of the ADR offer by November 6, 2012. Rather, on November 6, 2012, Complainant filed a Motion for Stay of Proceeding (“Motion”) requesting that the undersigned “stay the proceedings in [this] matter during the pendency of an ongoing criminal investigation.” Mot. at 1. Complainant’s request “includes staying the October 23, 2012, option to participate in alternative dispute resolution with an Administrative Law Judge.” Mot. at 1. On November 20, 2012, Respondent submitted an Objection to Motion for Stay of Proceeding (“Objection”).

II. Standard for Adjudicating Motions to Stay

Under Section 22.7 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits as set forth in 40 C.F.R. Part 22 (“Rules of Practice”), a presiding Administrative Law Judge (“ALJ” or “Judge”) may extend the time to file any document in this proceeding “upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties,” or on the Judge’s own initiative. 40 C.F.R. § 22.7(b). “A stay of proceedings is a matter of discretion for the presiding judge.” *Thomas Caracio*, EPA Docket No. CAA-03-2010-0408, 2011 EPA ALJ LEXIS 10 (ALJ, June 23, 2011) (Order Denying Complainant’s Motion to Stay Proceedings) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936)); see *Diomed, Inc. v. Total Vein Solutions, LLC*, 498 F. Supp. 2d 385, 387 (D. Mass. 2007) (“It is axiomatic that granting a motion to stay is within the discretion of this Court.”).

In deciding whether to stay a proceeding, Judges have considered factors such as:

- whether or not it will serve the interests of judicial economy;
- whether or not the stay will result in unnecessary or unreasonable delay; to what extent, if any, hardship would result from the stay;
- whether or not a stay would eliminate unnecessary expense and effort; and to what degree, if any, the ALJ’s docket may be affected adversely by a stay.

Unitex Chem. Corp., EPA Docket No. TSCA-92-H-09, 1993 EPA ALJ LEXIS 146 at *3 (ALJ, Mar. 18, 1993) (Order Staying Proceedings) (quoting *General Motors Corp.*, EPA Docket No. II-TSCA-PCB-91-0245 (ALJ, Feb. 5, 1993) (Order Staying Proceedings)). Judges have also considered whether a stay will affect “the availability of witnesses at the time of any hearing,” or impact “preservation by both parties of records” relevant to the case. *Id.* at *5. In cases where an administrative enforcement action was pursued contemporaneously with a related criminal proceeding, Judges have evaluated whether disparate rules of discovery could adversely affect the criminal action and whether the “Fifth Amendment privilege against self-incrimination” would “hinder[] the effectiveness of the evidentiary hearing” until the criminal proceeding had ended. *Pyramid Chem. Co.*, 11 E.A.D. 657, 686–87 n.42 (EAB 2004). Generally, motions to stay “will most likely be granted in situations likely to conserve judicial and party time, resources, and energy.” See *Diomed*, 498 F. Supp. 2d at 387.

Where a stay of proceedings is granted, it should generally be for a definite or moderate period. A stay that is “immoderate or indefinite” in duration may constitute an abuse of discretion if granted “in the absence of a pressing need.” *Cherokee Nation of Oklahoma v. United States*, 124 F.3d 1413, 1416 (Fed. Cir. 1997) (quoting *Landis*, 299 U.S. at 255) (internal quotation marks omitted). “In deciding to stay proceedings indefinitely, a trial court must first identify a pressing need for the stay. The court must then balance interests favoring a stay against interests frustrated by the action. Overarching this balancing is the court’s paramount obligation to exercise jurisdiction timely in cases properly before it.” *Id.*

Every motion requesting a stay of proceedings, regardless of the length of the stay requested, should “set forth sufficient reasons to delay the proceeding.” *Thomas Caracio*, EPA Docket No. CAA-03-2010-0408, 2011 EPA ALJ LEXIS 10, at *3 (ALJ, June 23, 2011) (Order Denying Complainant’s Motion to Stay Proceedings); *see* 40 C.F.R. § 22.16(a) (mandatory contents of motions).

III. Parties’ Arguments

In its Motion, Complainant requests that this proceeding be stayed “during the pendency of an ongoing criminal investigation.” Mot. at 1. Complainant states that “[d]uring settlement negotiations in June and July 2012, EPA was provided with documents, including lead disclosure forms, that were not available at the time of EPA’s inspection on September 23, 2010. After reviewing these documents, EPA . . . brought the matter to the attention of Region 1’s Criminal Investigation Division (“CID”).” *Id.* at 1–2. Complainant states that “[o]n November 5, 2013, [sic] CID notified EPA’s counsel “that a criminal investigation is active and continuing” *Id.* at 2. Complainant then filed its Motion on November 7, 2012. *Id.*

In its Objection, Respondent states that “[b]etween April 2012 and June 2012” it “worked diligently . . . to provide Complainant with documentation pertaining to the allegations in the Complaint.” Obj. at 1. Respondent states that it provided additional documents to Complainant and engaged in settlement discussions between June 2012 and August 2012. *Id.* at 1–2. Respondent claims that during this time, “the Complainant requested that the Respondent file fourth and fifth extensions of time to allow the Complainant additional time to review the documentation.” *Id.* at 2. Respondent states that “[o]n October 2, 2012, three days before the October 5th” pleading deadline set by the Regional Judicial Officer, “Complainant informed Respondent that additional time was needed to further review the documentation.” *Id.* Respondent claims that it “has diligently responded to all of Complainant’s requests for documentation over the past eight (8) months and voluntarily compiled, indexed, and outlined all documents provided.” *Id.* at 3. Respondent argues that “[a]fter consenting to five extensions, producing two lengthy memoranda with voluminous supporting documentation, participating in a settlement conference at Complainant’s office, and partaking in a conference call with” the Regional Judicial Officer, “the Respondent has exhausted his efforts to resolve this matter and wishes to proceed in a timely manner.” *Id.*

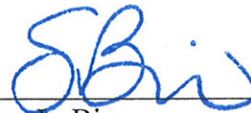
IV. Discussion

Complainant's Motion is simply too vague and lacking in detail to warrant that it be granted. Complainant has not adequately demonstrated why there is good cause to justify an extension under 40 C.F.R. § 22.7(b). Complainant's Motion does not clearly identify the subject and target of the criminal investigation or explain why the commencement of that investigation should result in the stay of this proceeding. Given that this proceeding was initiated on March 27, 2012, Complainant has not shown good cause justifying any additional delay. *See* 40 C.F.R. § 22.4(c) ("the Presiding Officer shall . . . avoid delay.")

Further, the Motion seems to indicate that the requested duration of the stay should be "during the pendency of [the] ongoing criminal investigation." Mot. at 1. Without more specific details describing the investigation, this is essentially a request for an indefinite stay. Complainant has not shown a "pressing need" for an indefinite stay of proceedings under the circumstances. *See Landis*, 299 U.S. at 255.

For these reasons, Complainant's Motion is hereby **DENIED**.

SO ORDERED.



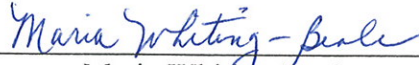
Susan L. Biro
Chief Administrative Law Judge

Dated: December 7, 2012
Washington, D.C.

In the Matter of Juan Hernandez, Respondent
Docket No. TSCA-01-2012-0029

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Denying Complainant's Motion To Stay Proceedings**, dated December 7, 2012, was sent this day in the following manner to the addressees listed below.



Maria Whiting-Beale
Staff Assistant

Dated: December 7, 2012

Original And One Copy To:

Sybil Anderson
Headquarters Hearing Clerk
U.S. EPA
Mail Code 1900L
1200 Pennsylvania Avenue, NW
Washington, DC 20460-2001

Copy By Regular Mail To:

Steven Schlang, Esquire
Senior Enforcement Counsel
U.S. EPA
Mail Code ORA18-1
5 Post Office Square
Boston, MA 02109-3912

Daniel S. Nagel, Esquire
Rachel A. Schwartzman, Esquire
Cohen & Wolf, P.C.
1115 Broad Street
Bridgeport, CT 06604