

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

In the matter of)
)
Environmental Protection Services, Inc.,) **Docket No. TSCA-03-2001-0331**
)
Respondent)

**ORDER DENYING RESPONDENT'S
MOTION TO DEFER HEARING**

Environmental Protection Services, Inc. ("EPS"), has filed a motion to defer the taking of testimony of United States Environmental Protection Agency ("EPA") Investigator David Dillon on June 29-30, 2004, in Philadelphia, Pennsylvania. EPS requests a deferral of this hearing pending a ruling in a Freedom of Information Act ("FOIA") matter presently before the United States District Court for the Northern District of West Virginia. EPS v. U.S. EPA, Civil Action No. 5:01-CV-230.

The crux of EPS's position is that the FOIA action in District Court may produce Investigator Dillon's "handwritten interview notes" created during an investigation of a competitor of the respondent and that these interview notes may cast light on the Investigative Activity Reports admitted into the evidentiary record by order dated June 9, 2004. EPA opposes EPS's motion to defer the taking of David Dillon's testimony, essentially describing respondent's argument as speculative and untimely.

EPS's motion is *denied*. It is unknown when the District Court will render its decision, whether this decision will be favorable to respondent, and, if so, whether the interview notes of Dillon will be of any significance to the present enforcement case. Moreover, there has been no showing by EPS that it cannot proceed with the questioning of Dillon solely on the basis of the Investigative Activity Reports. Indeed, when respondent filed its Supplemental Motion to Reopen Hearing, it sought the inclusion of these Investigative Activity Reports into the record, as well as the opportunity to question Dillon concerning them. This in fact is what has been ordered. The Investigative Activity Reports have been admitted into evidence and Investigator Dillon has been directed to appear as a witness in this matter.

Carl C. Charneski
Administrative Law Judge

Issued: June 16, 2004
Washington, D.C.