



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
BITUMA-STOR, INC. d/b/a) DOCKET NO. EPCRA-7-99-0045
BITUMA CORPORATION AND GENCOR)
INDUSTRIES, INC.,)
)
RESPONDENT)

ORDER ON RESPONDENT'S MOTION TO STAY

This proceeding arises under the authority of Section 325 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11045 (Supp. IV 1986), and is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-32.

In an Order Granting Joint Motion for Postponement of Hearing entered by the undersigned on April 6, 2000, the hearing in this matter was postponed for the second time. The hearing now is scheduled to begin on June 27, 2000. The hearing will be limited to the issue of the appropriate penalty as the parties stated in their Joint Motion for Postponement of Hearing that they have entered stipulations concerning the liability issues for all counts of the Complaint.

On April 6, 2000, Respondent mailed a Motion to Stay. In this motion, Respondent moves to stay the proceedings on the ground that creditors of Gencor Industries, Inc. have filed against Respondent an involuntary bankruptcy proceeding in the United States Bankruptcy Court in Wilmington, Delaware, on April 5, 2000, as reported in an attached newspaper article from the *Orlando Sentinel*.

Complainant, the United States Environmental Protection Agency ("EPA"), opposes Respondent's motion to stay. The EPA submits that Respondent has represented that independent auditors are conducting

a review of Respondent's financial condition and are expected to issue a report in late May 2000.

Respondent simply asserts that a stay should be granted on the basis of the proffered newspaper article reporting the filing of an involuntary bankruptcy proceeding. Respondent cites no authority in support of its motion. First, it is noted that this administrative enforcement action brought by the EPA is not automatically stayed as a result of the bankruptcy proceeding involving Respondent. This is a proceeding to enforce the regulatory powers of a governmental unit, and as such is exempt from the automatic stay provisions of the Bankruptcy Code under 11 U.S.C. § 362 (b)(4) (1999). See *United States v. Nicolet, Inc.*, 857 F. 2d 202, 209 (3rd Cir. 1988). This is not to say, however, that enforcement of any order assessing penalties or a money judgment is not subject to control of the Bankruptcy Court. Second, Respondent's own submission in support of its motion to stay indicates that a stay on account of the bankruptcy proceeding is not warranted. Specifically, the proffered newspaper article quotes Respondent's Chairman E.J. Elliott as stating "Gencor is a viable and profitable company and certainly should not be in Chapter 11." Accordingly, the Motion to Stay is **Denied**.

Original signed by undersigned

Barbara A. Gunning
Administrative Law Judge

Dated: 4-20-00
Washington, DC