



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Borla Performance Industries, Inc.,) Docket No. CAA-09-2020-0044
)
Respondent.)

ORDER ON RESPONDENT’S MOTION TO STAY THE PROCEEDING

This matter commenced on June 30, 2020, when the Director of the Enforcement and Compliance Assurance Division of the U.S. Environmental Protection Agency (“EPA”), Region 9 (“Complainant”) filed a Complaint and Notice of Opportunity for Hearing against Borla Performance Industries, Inc. (“Respondent”), alleging violations of Title II of the Clean Air Act (“CAA”), 42 U.S.C. § 7521 *et seq.* Complainant’s Motion for Accelerated Decision on Liability and to Strike Affirmative Defenses (“AD Motion”) was filed on April 20, 2021. Respondent filed its Opposition to the AD Motion on June 12, 2021, and Complainant filed its Reply to the Opposition on July 26, 2021. The AD Motion is fully briefed and awaiting resolution by this Tribunal.

Now pending before the Tribunal is Respondent’s Motion to Stay the Proceeding (“Motion” or “Motion to Stay”), filed February 16, 2022. In the Motion to Stay, Respondent requests a stay of this proceeding pending the resolution of *Racing Enthusiasts and Suppliers Coalition v. EPA*, No. 16-1447 (“*RESC*”), filed in the Court of Appeals for the D.C. Circuit on December 27, 2016. Mot. at 1. According to Respondent, that matter concerns a Petition for Review “challenging portions of a 2015 proposed rulemaking by EPA that primarily focused on greenhouse gas emissions standards for heavy-duty on-road vehicles” but also “included only two paragraphs on motor vehicle tampering[.]” Mot. at 4. Respondent contends that when EPA issued the Final Rule in 2016 after receiving “strong pushback from the regulated community,” it made some statements in the Preamble and included “other material changes to several key regulatory provisions related to tampering that were not specifically identified or explained in the Preamble but arguably could be used” to support what Respondent views as changes to EPA’s interpretation of the Clean Air Act. Mot. at 4. Respondent reports that on December 6, 2021, the *RESC* matter was returned to the active docket of the appeals court after being held in abeyance since 2017 and briefing on the matter is set to conclude on March 30, 2022. Mot. at 5.

Respondent asserts that “[t]he *RESC* case addresses the interpretation of key CAA provisions that underlie EPA’s allegations in the instant case[.]” Mot. at 1. Respondent goes on to suggest “[a] limited stay is appropriate to allow this tribunal the benefit of the D.C. Circuit’s guidance before ruling on EPA’s pending Motion for Accelerated Decision and proceeding to hearing in this case.” Mot. at 1. Respondent argues that “the interests of judicial economy will be served by awaiting guidance from the D.C. Circuit on how to interpret the key CAA provisions at issue” and that “[m]oving forward with a decision on the [AD Motion] and

proceeding to a hearing without waiting for the *RESC* decision could create inconsistent outcomes that lead to further challenges and delays in this matter.” Mot. at 7–8. Respondent suggests “[a] limited stay will conserve the parties’ and this tribunal’s resources” and “may also impact the parties’ positions regarding early resolution of this matter.” Mot. at 8. Respondent also declares that “there would be no hardship to either party or any harm resulting from the requested stay” and that “there is no potential for environmental impact from staying these proceedings.” Mot. at 8. Respondent also proffers that “there would be no adverse effect on this tribunal’s docket because the requested stay, if granted, is for a specified duration” and, because the prehearing exchange process and briefing for the AD Motion has been completed, “no specific impact is anticipated with respect to records preservation or witness availability.” Mot. at 9.

Complainant filed its Response to Motion for Stay (“Response”) on March 3, 2022, asking that Respondent’s Motion be denied. Complainant opens by arguing that “the legal question that Respondent claims is key to disposition of this Proceeding . . . is not at all dispositive here” because Respondent has not provided the requisite evidence: Complainant proclaims that “Respondent’s competition use legal arguments are immaterial to this Proceeding given it has provided no facts showing that a motor vehicle converted for competition was connected with any defeat device sale (save one)[.]” Resp. at 3–4. Complainant also indicates that “[g]iven the posture of the *RESC* case and its limited focus on the reasonableness of the 2016 rule clarifications, rather than the scope of the CAA’s defeat device and tampering prohibition, a D.C. Circuit decision on the *RESC* rule petition would likely not advance Respondent’s defense” as even a ruling in favor of the *RESC* petitioner may not “speak to whether the CAA provides a competition exemption to tampering with motor vehicle emission controls, and thus provide no controlling authority on Respondent’s legal defense.” Resp. at 6. Finally, Complainant argues its “ability to effectively prosecute this case would be prejudiced from the delay caused by a stay” and that, as briefing in the *RESC* matter is not yet complete, the stay Respondent seeks “is indefinite in duration” and unwarranted. Resp. at 7.

Respondent filed its Reply in Support of Motion to Stay the Proceeding (“Reply”) on March 14, 2022. In its Reply, Respondent expounds on the relevance of the *RESC* case to the present matter, stating that the EPA position the *RESC* petitioner is challenging “lies at the heart of this case and its resolution will dispose of many issues in this case and will significantly narrow the scope of proceedings for any issues that remain”; Respondent also repeatedly argues that issues raised in the AD Motion are now squarely in front of the D.C. Circuit. Reply at 1–7. Regarding the cost of this litigation, Respondent asserts that “[a]waiting D.C. Circuit guidance on the key legal questions will at least partially mitigate the costs to Respondent of EPA’s decision to defer ultimate judicial resolution.” Reply at 8. Respondent reiterates that a stay will not interfere with this matter because “[t]here is thus a limited universe of parts at issue and no ongoing alleged violations, so a brief delay will have little or no impact on any party’s practical ability to litigate this case.” Reply at 8. As to the timing of the *RESC* decision, Respondent notes that:

The final brief will be submitted by the end of this month (March 30, 2022), oral argument in the D.C. Circuit is typically scheduled fairly promptly, and EPA cites no reason to expect an unusual delay in the decision. Stays have been granted in cases where briefing in the D.C. Circuit was less advanced than it is here, and any concerns

with an unusual delay can be addressed by imposing an outer limit on the stay.

Reply at 8–9 (footnote omitted).

“It is beyond dispute that whether to grant a stay is a matter within the discretion of an Administrative Law Judge.” *E.I. du Pont de Nemours & Co.*, EPA Docket Nos. TSCA-HQ-2004-0016, RCRA-HQ-2004-0016, 2004 WL 2920519, at *1 (ALJ, Nov. 23, 2004) (Order Denying Complainant’s Motion for Stay, etc.). As this Tribunal has noted:

In deciding whether to stay a proceeding, EPA administrative law judges have considered the following factors: whether or not the stay will serve the interests of judicial economy, result in unreasonable or unnecessary delay, or eliminate any unnecessary expense and effort; the extent, if any, of hardship resulting from the stay, and of adverse effect on the judge’s Docket; and the likelihood of records relating to the case being preserved and of witnesses being available at the time of any hearing.


John Crescio, EPA Docket No. 5-CWA-98-004, 1999 WL 362862, at *1 (ALJ, Feb. 26, 1999) (Order on Joint Motion for Staying Proceedings). “A federal trial court generally may not grant a stay so extensive that it is ‘immoderate or indefinite’ in duration, and a trial court abuses its discretion by issuing ‘a stay of indefinite duration in the absence of a pressing need.’” *Id.* at *2 (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 255, 257 (1936)). “In determining whether to stay proceedings indefinitely, a ‘pressing need’ is identified by balancing interests favoring a stay against interests frustrated by a stay, but ‘[o]verarching this balancing is the court’s paramount obligation to exercise jurisdiction timely in cases before it.’” *Id.* (quoting *Cherokee Nation of Okla. v. United States*, 124 F.3d 1413, 1416 (Fed. Cir. 1997)).

It is the responsibility of this Tribunal to ensure that the matters on its docket move ahead in a timely fashion. See 40 C.F.R. § 22.4(c)(10). Briefing in the *RESC* matter is scheduled to conclude on March 30, 2022, and it is uncertain how long the panel will need to consider the briefs, consider issues raised at the oral argument (if one is held), and issue a decision. The contours of the stay Respondent seeks are therefore too imprecise, and such a stay should only be granted if there is a pressing need for one. Yet, the Tribunal is not convinced that the interests favoring a stay will be well-served here: Based on the *RESC* briefs submitted with the Motion and Response as exhibits, the Tribunal is not certain that the D.C. Circuit’s holding is guaranteed to impact this matter moving forward. Moreover, postponement of this proceeding for many more months would not serve the interests of judicial economy: This Tribunal’s Order resolving the AD Motion was drafted before Respondent filed its Motion to Stay, so declining to issue it at this time would not spare any judicial effort.

Since a stay would impact only the hearing at this point, I will also highlight that there is no good reason for delaying the hearing. The Order on the AD Motion disposes of the basis for Respondent’s argument in support of its Motion to Stay, and deferring the hearing on the penalty to wait for the D.C. Circuit is not an efficient use of the Tribunal’s time or the parties’ time.

The Motion to Stay is **DENIED**.

SO ORDERED.



Susan L. Bino
Chief Administrative Law Judge

Dated: March 15, 2022
Washington, D.C.

In the Matter of *Borla Performance Industries, Inc.*, Respondent.
Docket No. CAA-09-2020-0044

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Respondent's Motion to Stay the Proceeding**, dated March 15, 2022, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.


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Dated: March 15, 2022
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