

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the matter of)
)
The Ford Motor Company,) Docket No. RCRA-5-99-010
)
Respondent)

ORDER

This matter arises under Section 3008(a)(1) of the Solid Waste Disposal Act, also referred to as the Resource Conservation and Recovery Act (“RCRA”). 42 U.S.C. § 6928(a)(1). On September 30, 1999, the U.S. Environmental Protection Agency (“EPA”) filed a complaint against The Ford Motor Company (“Ford”) alleging three violations of RCRA. EPA seeks the assessment of a civil penalty and the issuance of a Compliance Order against Ford.

Thereafter, on January 24, 2000, the parties filed a joint motion to stay these proceedings. In this motion, the parties represented that EPA Region 5 was in the process of obtaining from “OAQPS” and “OSWER” (apparently headquarters) a clarification of a novel issue presented in this case. It seemed that EPA was having second thoughts as to whether one of the alleged violations actually occurred.

On February 3, 2000, an order was issued in effect denying the parties’ request for an indefinite stay of proceedings. This order in part stated that if EPA no longer believes that certain violations of RCRA occurred, or if it was unsure about the alleged violations, then the agency could move to withdraw the complaint, without prejudice. EPA was given until April 3, 2000, to inform the court as to whether it intends to proceed against Ford as outlined in the complaint.

EPA submitted its response on March 31, 2000. EPA’s response, however, is unclear. With respect to Count I, the count as to which EPA seems to harbor some doubts, the agency stated that it is prepared to proceed.¹ At the same time, EPA renewed its request for a stay of proceedings as to Count I, until such time as the EPA’s Office of Solid Waste (“OSW”) issues an applicability determination addressing the “point of generation,” which is the cornerstone of

¹ EPA summarized Count I as follows: “At issue is whether significant portions of the paint lines and equipment at Ford’s Ohio assembly plant in Avon Lake, Ohio, as well as other automotive manufacturing facilities, are subject to the requirements of 40 C.F.R. Part 265, Subparts BB and CC.” EPA Resp. at 1 n. 1.

this count. Despite the fact that EPA believes that the determination by OSW is “imminent,” EPA requests a stay which is open-ended.

On balance, staying proceedings in this matter would not be prudent. As noted, EPA filed the complaint in this case on September 30, 1999. It is now April 3, 2000, and the parties have not even engaged in the prehearing exchange process. Given these dates, it is by no means unreasonable to begin moving this case along. Indeed, EPA states that it is ready to proceed in this matter. Moreover, given EPA’s representation that the crucial OSW determination is “imminent,” and the liberal dates for complying with the prehearing exchange order (issued this date), the denial of EPA’s motion for an indefinite stay would work no hardship upon the parties.²

Finally, as to Counts II and III (counts which are not affected by the OSW determination), EPA seems to suggest that the parties have reached a settlement in principle. If that is the case, the parties may submit a motion requesting that proceedings be stayed as to the settled counts, and propose a reasonable date for the filing of an executed Consent Agreement and Final Order.

Carl C. Charneski
Administrative Law Judge

Issued: April 3, 2000
Washington, D.C.

² EPA shall promptly advise the undersigned as to any OSW determination relative to Count I.