



Office of Administrative Law Judges



[Recent Additions](#) | [Contact Us](#) **Search:** All EPA This Area

You are here: [EPA Home](#) » [Administrative Law Judges Home](#) » [Decisions & Orders](#) » [Orders 1999](#)

- Decisions & Orders
- About the Office of Administrative Law Judges
- Statutes Administered by the Administrative Law Judges
- Rules of Practice & Procedure
- Environmental Appeals Board
- Employment Opportunities

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of)	
)	
U. S. Department of the Navy,)	Docket No. RCRA-III-
9006-062		
Naval Air Station Oceana,)	
)	
Respondent)	

ORDER GRANTING MOTION TO STAY
PROCEEDINGS AS TO PENALTY ISSUES

By motion dated May 20, 1999, Respondent requests an order staying proceedings as to the penalty in this matter ("Motion"). In response, Complainant states that it has no objection to the Motion. The Motion will be granted for the reasons stated below.

This proceeding was initiated by a Complaint filed on September 29, 1998, pursuant to Section 9006 of the Resource Conservation and Recovery Act (RCRA). The Complaint alleged two counts of violation arising from Respondent's alleged failure to maintain certain equipment on underground storage tanks (USTs) at Respondent's facility at the Naval Air Station Oceana. Count I of the Complaint was withdrawn by Order dated January 21, 1999. On January 12, 1999, Respondent served a Motion for Partial Accelerated Decision as to Count II of the Complaint. Complainant responded and filed a Cross Motion for Accelerated Decision on January 27, 1999 (Cross Motion). The parties filed responsive pleadings, and on April 13, 1999, presented oral argument on their respective motions for accelerated decision. The parties presented oral argument on several issues, including the issue of whether EPA has authority to assess punitive penalties against Federal facilities for underground storage tank (UST) violations of RCRA.

Three days after the oral argument, on April 16, 1999, the General Counsel of the Department of Defense submitted to the Department of Justice Office of Legal Counsel (OLC) a request for an opinion on whether EPA has such authority. Respondent states that a decision by the OLC will be binding on Complainant and Respondent. Respondent asserts that, in deference to the submittal of the Department of Defense and to the procedure established by Executive Order 12146, a partial stay of these proceedings would be appropriate. [\(1\)](#)

Respondent clarifies that it requests a stay only as to the penalty portion of this proceeding, which would affect Part IV of the Complaint (the proposed penalty assessment) and Respondent's First, Second and Fourth Affirmative Defenses, but would not affect Part II (allegations of Count II) and Part III (the Compliance Order) of the Complaint. The stay is requested until the dispute is resolved by OLC, provided that if Respondent prevails on the issue of liability, the stay should be lifted and an "initial decision" entered.

In response, stating that it does not object to the Motion to Stay, Complainant asserts that it is EPA's understanding that OLC has requested that the parties stay the proceedings before EPA, and that a decision from OLC could be rendered as early as July of 1999. [\(2\)](#)

A stay of proceedings is a matter of discretion for the presiding judge. See, *Landis v. North American Co.*, 299 U.S. 248, 254-55 (1936); *Unitex Chemical Corp.*, EPA Docket No. TSCA-92-H-08, 1993 EPA ALJ LEXIS 146 (ALJ, Order Staying Proceedings, March 18, 1993)(granting a stay of one year or until decision by D.C. Circuit, whichever occurs first, where D.C. Circuit had already scheduled briefs and oral argument, and decision would affect most or all claims in the administrative proceeding); citing, *General Motors Corp.*, EPA Docket No. II-TSCA-PCB-91-0245 (ALJ, Order Staying Proceedings, February 5, 1993). A stay has been granted, pending the OLC's opinion, in other administrative proceedings against Federal facilities, concerning UST violations of RCRA. See, *Department of the Army, Walter Reed Army Medical Center*, and *Department of the Army, Walter Reed Army Medical Center, Forest Glen Annex*, EPA Docket Nos. RCRA-III-9006-052 and RCRA-III-9006-054 (Summary of Prehearing Conference, and Order Granting Motion for Accelerated Decision as to Liability and Granting Request for Stay of Proceedings as to Penalty Issues, May 25, 1999).

Accordingly, Respondent's request for a stay as to penalty issues in this proceeding is **GRANTED**. This proceeding is stayed with respect to all penalty issues until the date that the Department of Justice Office of Legal Counsel issues its opinion as to EPA's authority to assess penalties against Federal facilities for alleged violations of UST requirements. A ruling on the parties' cross motions for accelerated decision as to issues of liability will be forthcoming.

Susan L. Biro
Chief Administrative Law Judge

Dated: June 8, 1999

Washington, D.C.

1. Executive Order 12146 provides, in pertinent part:

1-401: Whenever two or more Executive agencies are unable to resolve a legal dispute between them, including the question of which has jurisdiction to administer a particular problem or to regulate a particular activity, each agency is encouraged to submit the dispute to the Attorney General.

1-402: Whenever two or more Executive agencies whose heads serve at the pleasure of the President are unable to resolve such a legal dispute, the agencies shall submit the dispute to the Attorney General prior to proceeding in any court, except where there is a specific statutory vesting of responsibility for a resolution elsewhere.

2. Respondent, however, notes in its Motion that EPA had not yet responded to the Department of Defense's submittal to OLC.

[EPA Home](#) | [Privacy and Security Notice](#) | [Contact Us](#)

file:///Volumes/KINGSTON/Archive_HTML_Files/navyocea.htm

[Print As-Is](#)

Last updated on March 24, 2014