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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

| | | |
|--------------------------------------|---|------------|
| In the Matter of: |) | |
| |) | |
| United States Department of the Army |) | |
| Walter Reed Army Medical Center, |) | Docket No. |
| RCRA- III - 9006- 054 |) | |
| Forest Glen Annex |) | |
| |) | |
| Respondent |) | |

ORDER ON MOTION FOR EXPEDITED CHANGE
OF PREHEARING EXCHANGE SCHEDULES
AND FOR STAY OF PROCEEDINGS

The Complaint in this matter was filed on June 30, 1998, pursuant to Section 9006 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6991e, alleging violations of hazardous waste regulations in regard to underground storage tanks (USTs) at Respondent's Forest Gen Annex, located in Silver Spring, Maryland. After Respondent filed an Answer to the Complaint, a Prehearing Order was issued on September 16, 1998, requiring, *inter alia*, Complainant to file its prehearing exchange by November 20, 1998. Thereafter, on October 22, 1998, Complainant requested a stay of the prehearing exchange pending its intended motion to amend the Complaint. The request for stay, and an extension for filing a motion to amend the Complaint, were granted. Complainant submitted a motion to amend the Complaint, and the Amended Complaint, on December 4, 1998. Respondent served an Answer to the Amended Complaint on December 16, 1998, asserting Affirmative Defenses and requesting a hearing. The motion to amend was granted and a prehearing exchange schedule was set by order dated December 28, 1998, directing both parties to submit their prehearing exchanges by January 22, 1999.

Complainant submitted on January 15, 1999 a Motion for Expedited Change of Prehearing Exchange Schedules and For Temporary Stay of RCRA-III-9006-052 (Motion for Stay). Another proceeding was initiated by Complainant concurrently with the present proceeding, also alleging violations of hazardous waste regulations for USTs, against the Walter Reed Army Medical Center, for USTs located at its facility located at 6800 Georgia Avenue N.W. Washington, D.C. (Washington D.C. matter). [\(1\)](#)

Complainant requests the stay on the basis that it intends to file a motion for accelerated decision in this matter, and that it seeks to have the benefit of a ruling on that motion prior to the prehearing exchange. Complainant explains that it would serve the goal of judicial economy, in that the parties would not have to gather, and the Presiding Judge would not have to review, prehearing exchange documents, the need for which may be obviated by an accelerated decision, and that factual and legal issues would be focused.⁽²⁾ Complainant recites in the Motion for Stay that it has advised Respondent thereof and that Complainant does not object.

Section 555(b) of the Administrative Procedure Act requires each Federal agency to proceed to conclude a matter presented to it within a reasonable time. This proceeding was initiated over six months ago. To delay the prehearing exchange or to stay proceedings would not only delay the hearing, should one be necessary, but may also hinder the judge's ability to rule on a motion for accelerated decision.

In federal court, discovery is strongly favored before summary judgment is granted. *Miller v. United States*, 710 F.2d 656, 666 (10th Cir. 1983); *Bryant v. O'Connor*, 848 F.2d 1064, 1068 (10th Cir. 1988). The prehearing exchange is the mechanism for discovery in EPA's administrative enforcement proceedings. Accelerated decision, like summary judgment, may be granted only if there are no genuine issues of material fact. 40 C.F.R. § 22.20(a). There are essentially no documents other than pleadings, procedural motions and rulings currently in the case file, so there is not yet any development of the facts alleged in this case upon which to determine whether a genuine issue of material fact exists. Complainant does not in its Motion for Stay set forth the legal issues which its motion for accelerated decision would address. Therefore, it may be assumed that prehearing exchange information may be helpful to the judge in ruling on any motion for accelerated decision.

Accordingly, **IT IS ORDERED THAT** Complainant's Motion for Expedited Change of Prehearing Exchange Schedules and For Temporary Stay of RCRA-III-9006-052 is **DENIED**. The parties' prehearing exchanges are due on **January 22, 1999** as previously ordered.

Susan L. Biro
Chief Administrative Law Judge

Dated: January 20, 1999
Washington, D.C.

1. The Motion listed both docket numbers RCRA-III-9006-052 and RCRA-III-9006-054, which signifies that the two proceedings have been consolidated. No motion to consolidate the proceedings has been received or granted, and proceedings cannot be consolidated except by the Presiding Officer. 40 C.F.R. § 22.12. In the interest of efficiency, the Motion will be treated as two separate motions, one filed for each proceeding. However, the parties are hereby reminded to file separate motions for each of the separate proceedings.
2. It is noted that the documents that Complainant is directed to produce in its prehearing exchange are not numerous and should be immediately available to Complainant.

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