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- 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)	
)	
Icor International, Inc.)	Docket No. CAA-5-
98-038)	
)	
Respondent)	

**ORDER DENYING MOTION FOR
EXTENSION OF HEARING DATE**

The Region 5 Office of the United States Environmental Protection Agency (the "Region" or "Complainant") has moved for an extension of the hearing date in this matter, and has filed a notice of substitution of counsel. The hearing is scheduled to begin on May 11, 1999, in Indianapolis, Indiana. The Complaint in this proceeding, dated September 29, 1998, charges ICOR International, Inc., of Indianapolis, Indiana (the "Respondent" or "ICOR"), with three counts of violations of the Clean Air Act §608, 42 U.S.C. §7671g, and the Stratospheric Ozone Regulations, 40 CFR Part 82, with respect to ICOR's manufacture and distribution of equipment and refrigerants used in motor vehicle air conditioners. The Complaint seeks assessment of an administrative civil penalty of \$99,850 against ICOR for these alleged violations.

As explained below, the motion does not show good cause for granting such an extension. Therefore, the motion is denied. However, the denial is without prejudice to renewal if Complainant can specify the reasons supporting good cause for extending the hearing date.

The chief reason cited by the Region for its motion for an extension is its desire

to file a motion for accelerated decision and a motion to strike respondent's defenses. There is not enough time to allow for responses and replies to such a motion, and a decision by the judge, before the scheduled hearing date. The Region states that it could not evaluate the need to file such motions until it received the Respondent's prehearing exchange on March 18, 1999. The Region also states that the Respondent "does not oppose" the motion, provided its witnesses are available on the rescheduled date.

The problem with the motion for an extension is its vagueness. The motion does not specify what issues it seeks to resolve by accelerated decision or what evidence in the Respondent's prehearing exchange precipitated this strategy. The Complainant does not explain how extending the hearing date to allow motion practice would be likely to conserve judicial resources or increase the possibility for settlement. Complainant's "belief" that these consequences would ensue is not enough. To the contrary, without some specific explanation, it seems at least equally likely that additional motion practice followed by a hearing would result in a greater expenditure of resources by all parties. Granting the motion would also likely result in an overall delay in the resolution of this case. The parties are all apparently available to proceed on the currently scheduled hearing dates.

The Complainant's motion for an extension does not, for example, outline any significant legal issues that would be beneficial to resolve prior to hearing. It does not indicate whether essential facts could be established by accelerated decision. It does not even generally indicate whether the motion for accelerated decision would seek a determination of Respondent's liability for any of the three alleged violations, or a determination on the amount of the penalty. In short, there is no explanation whatsoever of the advantages of a written motion for accelerated decision, as opposed to an accelerated hearing in this case. In the absence of some specific explanation of how extending the hearing date to allow for a motion for accelerated decision would benefit the hearing process, the Complainant has not shown good cause for such an extension.

The substitution of Regional counsel is also not sufficient good cause for an extension at this time. If there is no extension of the hearing date, there will be no motions filed, and the new counsel will have adequate time to prepare for the hearing on May 11, 1999.

In recognition of the substitution of Regional counsel, however, and the unclear position of the Respondent, the denial of this motion will be without prejudice to renewal. Any renewed motion for an extension must be received (fax is acceptable) by my office no later than April 19, 1999.

Andrew S. Pearlstein
Administrative Law Judge

Dated: April 13, 1999
Washington, D.C.

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