

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of

Gordon Head and
William Spangler,

Docket No. TSCA-V-C-057-93

Respondents

ORDER

This order addresses yet another request by the U.S. Environmental Protection Agency ("EPA") to postpone further proceedings in this case. A brief description of the posture of this case is necessary in order to bring the EPA's request for an extension of time into focus.

This case is not new. It was initiated with EPA filing a complaint on September 15, 1993. Thereafter, a number of pleadings were submitted by the parties, none of which succeeded in bringing this matter to a close. The undersigned subsequently was designated as the Presiding Officer on November 9, 1995.

On February 8, 1996, an order was issued setting May 14, 1996, as the hearing date in this case.¹ Upon motion of EPA, an order was issued on May 9, 1996, canceling the hearing in part so as to allow complainant the opportunity to review financial documents recently provided by one of the respondents.

On July 1, 1996, EPA submitted a status report indicating that upon review of certain additional financial records the Agency may "substantially reduce or waive" the penalty amounts sought in this case. Pursuant to court order, EPA next provided a status report on August 1, 1996. In that report, EPA stated that it had not yet received the financial data promised by respondents. Thereafter, an order was issued directing that EPA be provided the subject financial information. EPA informed the court by way of another status report on August 16, 1996, that it had received the requested financial information and that it was in the process of reviewing this data.

An order was next issued on August 20, 1996, directing EPA to inform the court whether the complainant was "still seeking a penalty against respondents and, if so, the amount being sought." Furthermore, EPA was advised that any extensions of time for responding to the court's inquiry would be granted only for extraordinary circumstances.

EPA filed a timely response on September 20, 1996. In its response, EPA stated that " [b]ased on Respondents' representations, U.S. EPA is prepared to enter into a Consent Agreement and Consent Order (CACO) waiving any penalty amount(s) to be assessed against Respondents." In addition, EPA stated that it anticipated being able to present a CACO to the respondents by the end of October, 1996.

Upon receipt of EPA's September 20, 1996, status report, an order was issued on September 24, 1996, directing EPA to file with the court an executed CACO no later than November 15, 1996. Instead of complying with this order, however, EPA submitted a status report on November 15, 1996. In the report, EPA states that " [i]t has taken longer than anticipated to provide internal justification for and obtain U.S. EPA approval for mitigation of the \$3,760,000 penalty amount proposed in the Complaint in this case." Not only did the EPA fail to comply with the court's order of September 24, but it also belatedly requested an additional 30 days "to allow time for the Agency to approve and send the CACO to Respondents, and for Respondents to execute and return the CACO for filing by U.S. EPA." See 40 C.F.R. § 22.07(b) ("... The motion shall be filed in advance of the date on which the pleading, document or motion is due to be filed...").²

Given the procedural history of this case, EPA's request for an extension of time for the filing of an executed CACO is **DENIED**. EPA may file by November 26, 1996, a proper motion for extension of time setting forth specific performance dates, including the date for the filing of an executed CACO. Failure to properly request such an extension of time may result in this matter being dismissed for lack of prosecution.

Carl C. Charneski
Administrative Law Judge

Issued: November 20, 1996
Washington, D.C.

IN THE MATTER OF GORDON HEAD and WILLIAM SPANGLER, Respondents

Docket No. TSCA-V-C-057-93

Certificate of Service

I certify that the foregoing Order, dated November 20, 1996, as sent this day in the following manner to the below addressees.

Original by Regular Mail to:

Ms. Jodi Swanson-Wilson
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Copy by Facsimile and by Regular Mail to:

Attorney for Complainant:

Andre Daugavietis, Esquire
Assistant Regional Counsel
U.S. Environmental Protection
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Copy by Regular Mail to:

Respondents:

Gordon Head
3137 Lakeside Drive
Highland, IN 46322
William S. Spangler, Jr.
8129 Bison Court
Indianapolis, IN 46268

Marion Walzel
Legal Staff Assistant

Dated: November 20, 1996

¹ The hearing date was later changed to May 15, 1996.

² Interestingly, EPA has not even inquired as to whether its request for an extension of time was granted and whether any subsequently filed CACO would be considered timely.