

SR
7-31-92

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
ATLAS METAL & IRON) Docket No. TSCA-PCB-VIII-91-09
CORPORATION,)
)
Respondent)

ORDER STAYING SUBPOENA AND SUBPOENA DUCES TECUM

On July 29, 1992, the Director of Air, Radiation and Toxics Division of EPA Region VIII, who brought the Complaint herein, issued a subpoena and subpoena duces tecum to HWS Technologies, Inc. to appear for an oral deposition and to bring specified documents on August 3, 1992, at the Region VIII offices in Denver, Colorado. These subpoenas were purportedly issued pursuant to Section 11(c) of the Toxic Substances Control Act (TSCA), 15 U.S.C. §2610(c).

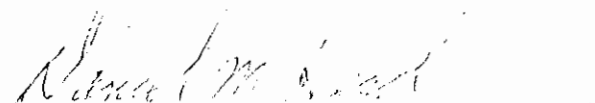
On July 31, the Respondent filed a motion for an expedited order for a temporary stay of the aforementioned subpoena and subpoena duces tecum, on the basis that they are unauthorized under Section 22.33(b) of the EPA Supplemental Rules of Practice (Supplemental Rules), 40 C.F.R. §22.33(b). The Respondent requests that these subpoenas be stayed so the merits of this matter can be discussed at a telephone conference scheduled by the Presiding Judge for the morning of August 4, 1992.

In view of time limitations, action is being taken on the Respondent's motion to stay without awaiting expiration of the

time to respond provided for in the Rules. Any objection to this Order will be entertained at the telephone conference on August 4, 1992.

Since good cause has been shown, the Respondent's motion for a temporary stay is granted and the issues relating to the subpoena and subpoena duces tecum will be covered at the August 4, 1992 telephone conference. The subpoena and subpoenas duces tecum were not addressed to the individual apparently involved, Mr. Tim Cooper, and the authority to issue the subpoenas is questionable since Section 22.33(b) of the Supplemental Rules can reasonably be interpreted as requiring permission of the Presiding Officer before issuance of a subpoena. In any event, the delay will permit a full ventilation of the issues and will not unduly prejudice any party, particularly since the prosecution of discovery and subpoenas has been left until 10 working days before the commencement of the evidentiary hearing on August 11, 1992.

SO ORDERED.



Daniel M. Head
Administrative Law Judge

Dated:



Washington, D.C.

IN THE MATTER OF ATLAS METAL AND IRON CORPORATION, DENVER,
COLORADO, Respondent

CERTIFICATE OF SERVICE

I certify that the foregoing Order Staying Subpoena and Subpoena Duces Tecum, dated July 31, 1992, was sent in the following manner to the addressees listed below:

Original by Regular Mail to:

Joanne McKinstry
Regional Hearing Clerk
U.S. EPA, Region VIII
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Copy by Facsimile Process and
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for Aurora M. Jennings

Aurora M. Jennings
Secretary

Dated: July 31, 1992
Washington, D.C.