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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)		
McKINNEY SMELTING, INC., 556C(P))	TSCA Docket No.	VI -
Respondent)		

ORDER GRANTING MOTIONS AND RESCHEDULING HEARING

By Motion filed January 23, 1998, Complainant moved for permission to amend its prehearing exchange to include as exhibits financial documents provided by Respondent. The Motion stated that Respondent had indicated it would not oppose the amendment, and no opposition has been filed. By Motion filed January 26, 1998, Complainant moved for permission to conduct further discovery concerning Respondent's ability to pay the proposed penalty. Respondent has not offered any response to this Motion and it will also be ruled on as unopposed. Finally, on February 6, 1998, Complainant and Respondent filed a Joint Motion to stay the proceedings for 60 days in order to allow Respondent to investigate the site and initiate remediation activities. For the reasons discussed below:

- 1) Complainant's Motion to Amend Prehearing Exchange is GRANTED.
- 2) Complainant's Motion For Permission To Conduct Further Discovery is **GRANTED.**
- 3) The parties' Joint Motion To Stay Proceedings for sixty (60) days is GRANTED.
- 4) The Hearing is rescheduled for May 5-7, 1998.

Complainant's Motion for Further Discovery

In its Motion, Complainant argues that further financial information is necessary for a full adjudication of the PCB penalty factors of Respondent's ability to pay and the effect of the penalty on Respondent's ability to do business. See, 15 U.S.C. § 2615(a)(2)(B). Complainant claims that information supplied by Respondent in response to the first set of Interrogatories suggests that Respondent has not offered a complete description of its financial situation. As indicated above, Respondent has offered no opposition to Complainant's Motion. As with Complainant's

first discovery request, the Rules of Practice limit discovery to that which: (1) will not unreasonably delay the proceeding; (2) will procure information otherwise unobtainable; and (3) will procure information of significant probative value. 40 C.F.R. § 22.19(f). All three of these requirements are met by Complainant's Motion for Further Discovery.

First, the granting of a 60 day stay and the rescheduling of the Hearing will afford Respondent ample time to prepare a response. Second, given the apparently labyrinthine structure of Respondent's finances, particularly in regard to its relationships with various subsidiaries and affiliates, Complainant has no alternate avenue of determining Respondent's complete financial health. Third, the significant penalty proposed in this proceeding, along with the aforementioned complexity of Respondent's finances, indicate that the requested information will have significant probative value. Therefore, inasmuch as Complainant's request meets the criteria of the Rules of Practice regarding discovery, the Motion For Permission To Conduct Further Discovery will be granted.

Joint Motion to Stay Proceeding

In the Joint Motion to Stay Proceedings, both parties request a stay of 60 days from the filing date of the Motion in order for Respondent to investigate the contamination of its facility and to begin remediation activities. The Motion contends that the United States has initiated judicial proceedings concerning Respondent's facilities and that the public interest would best be served by allowing Respondent to expend its resources on remediation rather than litigation.

The Joint Motion to Stay Proceedings is granted. This proceeding will be stayed from February 6, 1998, the date of the filing of the motion, until April 7, 1998. The parties are Ordered to submit a joint status report at the end of the 60 day period, detailing the remediation activities that were initiated during the period and indicating the status of settlement discussions. In order to accommodate the period during which Respondent will address remediation concerns at the facility, the hearing is rescheduled for May 5-7, 1998.

ORDER

Accordingly, it is ORDERED:

- 1) Complainant's Motion to Amend Prehearing Exchange is GRANTED.
- 2) Complainant's Motion For Permission To Conduct Further Discovery is GRANTED.
- 3) The parties' Joint Motion To Stay Proceedings for sixty (60) days is GRANTED.
- 4) The Hearing is rescheduled for May 5-7, 1998.
- 5) The parties shall file a joint status report by April 7, 1998, regarding remediation and settlement.

Susan L. Biro Chief Administrative Law Judge

Dated: ______ Washington, D.C.

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