

Amersham Intern. PLC v. Corning Glass Works, 618 F. Supp. 507, 509 (E.D. Mich. 1984). See, e.g., United States v. U.S. Currency, 626 F.2d 11, 17 (6th Cir.), cert. denied, 449 U.S. 993 (1980); United States v. Kordel, 397 U.S. 1, 8-9 (1970). See also United States v. Breyer, 41 F.3d 884, 893 (3d Cir. 1994). The Respondent submits that generally five competing interests must be balanced in determining whether a stay should be granted: (1) the interest of the plaintiff in proceeding expeditiously with the litigation or any particular aspect of it, and the potential prejudice resulting from a delay; (2) the burden which any particular aspect of the proceedings may impose on the defendant; (3) the convenience of the court in case management; (4) the interests of non-parties to the civil litigation; and (5) the interest of the public in the pending civil and criminal litigation. See, e.g., White v. Mapco Gas Products, Inc., 116 F.R.D. 498, 502 (E.D. Ark. 1987).

Specifically, the Respondent contends that the Complainant will suffer no prejudice if the proceedings are stayed pending the resolution of the criminal proceeding. On the other hand, the Respondent submits that the burden of criminal and civil proceedings on the Respondent is substantial because the criminal matter will divert the Respondent's critical resources away from the civil case as well as create serious Fifth Amendment concerns. The Respondent argues that the obvious prejudice to the Respondent and the adverse impact resulting from the invocation of his Fifth Amendment rights, if asserted, provide further support for a stay of proceedings. The Respondent maintains that judicial economy and efficiency favor a stay of proceedings because this may avoid duplicative litigation and the resolution of the criminal investigation may render administrative enforcement unnecessary or may narrow the issues that must be litigated in the administrative enforcement proceeding. The Respondent claims to be unaware of any non-parties whose interests would be adversely affected by a stay. Finally, it is asserted by the Respondent that the public's interest will not be diminished if a stay is granted.

With regard to the status of the pending criminal investigation, the Respondent reports that he has been informed that the investigation has been completed and that the Assistant United States Attorney is currently considering asking the grand jury to return an indictment against the Respondent. No specific timetable for asking the grand jury to return an indictment has been disclosed.

Further, the Respondent claims that the parties are actively engaged in settlement negotiations to resolve the instant action and that the Respondent is optimistic that a mutually agreeable settlement can be reached in the near future.

Again, as noted in the Order entered on May 8, 1998, the regulations governing these proceedings, the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.01 et seq., direct the Presiding Officer to avoid delay in the proceedings governed by the Rules. ⁽²⁾ 40 C.F.R. § 22.04(c). Even though the Respondent is correct in its assertion that the federal courts frequently grant stays in civil litigation to enable pending criminal prosecutions to be completed, the federal courts also recognize that there is no bar to adjudicating the liability of the same conduct through both a civil and criminal proceeding. See Hudson v. United States, 118 S. Ct. 488, 495 (1997) (holding that statutorily denominated civil sanctions do not impose jeopardy on the party being sanctioned). See also United States v. Ward, 448 U.S. 242, 248 (1980).

In the instant matter, the Respondent requests another six-month stay because the criminal investigation against the Respondent is still pending. Again, I note that a six-month delay in a civil administrative proceeding is significant and that there is no assurance that the pending criminal investigation will be concluded in six months.

However, based on the above stated representations by the Respondent, the Respondent's unopposed motion for a temporary stay of the proceedings is granted in part. The Respondent is advised that dismissal of the grand jury or any cancellation of the criminal investigation, including a vote of nonindictment, must be reported immediately to the undersigned.

The hearing scheduled for November 17 to 19, 1998, in Detroit, Michigan, is now rescheduled for **March 23 to 25, 1999**. In connection therewith, on or before **March 12, 1999**, the parties shall file a joint set of stipulated facts, exhibits, and testimony.

Original signed by the undersigned

Barbara A. Gunning
Administrative Law Judge

Dated: 11-02-98
Washington, DC

1. A prior stay of proceedings was granted by Order entered on May 8, 1998, on motion by both parties.
2. The term "Presiding Officer" means the Administrative Law Judge designated by the Chief Administrative Law Judge to serve as Presiding Officer. Section 22.03(a) of the Rules of Practice, 40 C.F.R. § 22.03(a).

[EPA Home](#) | [Privacy and Security Notice](#) | [Contact Us](#)

file:///Volumes/KINGSTON/Archive_HTML_Files/vellema3.htm
[Print As-Is](#)

Last updated on March 24, 2014