



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
E. I. du Pont de Nemours) DOCKET NOS. TSCA-HQ-2004-0016
and Company,) RCRA-HQ-2004-0016
)
)
RESPONDENT)

**ORDER DENYING COMPLAINANT’S MOTION FOR STAY,
GRANTING LIMITED EXTENSION OF TIME FOR COMPLAINANT TO FILE
REPLY IN SUPPORT OF COMPLAINANT’S MOTION FOR ACCELERATED
DECISION ON LIABILITY FOR COUNT III, AND AMENDING PREHEARING
EXCHANGE SCHEDULE**

On November 19, 2004, I received Complainant’s Motion for Extension of Time to File Reply in Support of Complainant’s Motion for Accelerated Decision on Liability for Count III (“Motion for Extension”) and on November 22, 2004, I received Complainant’s Motion for Temporary Stay of Proceeding (“Motion for Stay”).

In the Motion for Stay, Complainant states that it is requesting a sixty (60) day stay in order to review a substantial amount of new information that Respondent is submitting to the Agency regarding the chemical at issue in the instant proceeding, ammonium perfluorooctanoate (“APFO”) and the perfluorooctanoic acid (“PFOA”) anion associated with APFO. Complainant states, *inter alia*, that it should be afforded 60 days to review the “substantial amount of new information [Respondent] is submitting to the Agency to determine if there are any *additional* PFOA-related violations of [Toxic Substances Control Act (“TSCA”)] § 8(e) before proceeding further in the instant proceeding.” Motion for Stay at 7-8 (emphasis added). In a footnote, Complainant asserts that the new information Respondent is submitting “*may* also provide additional evidence regarding the violations alleged in Counts II and III of the Complaint, or may include potential violations of TSCA and [the Resource Conservation and Recovery Act] similar to those alleged in Counts II and III.” *Id.* at 8 n.6 (emphasis added). Respondent opposes the Motion for Stay.

It is beyond dispute that whether to grant a stay is a matter within the discretion of an

Administrative Law Judge. Previously, the oral argument on Counts II and III was scheduled for October 28, 2004. In response to the parties' October 14, 2004 Joint Motion to Extend Dates for Briefing Cross-Motions on Count III and to Modify Prehearing Order ("Joint Motion"), I rescheduled the oral argument to December 16, 2004. Complainant's requested stay would further push back the oral argument to late January of 2005. As stated by Complainant, the factual information Complainant anticipates receiving relates to *additional* violations of Section 8(e) of TSCA. Motion for Stay at 7-8. If the new information Complainant obtains yields any further suspected violations, Complainant may either request leave to amend the complaint or file a separate complaint. Although Complainant asserts that the new information *may* also provide additional evidence regarding Counts II and III, I anticipate setting forth a post-oral argument briefing schedule for the parties. The potential to supplement the oral argument presentations should ameliorate Complainant's concerns. Accordingly, I DENY the Motion for Stay.

As for the Motion for Extension of Time, Complainant seeks an extension for filing its reply on Count III which is currently scheduled for December 3, 2004. In the Joint Motion, the parties argued that oral argument should be scheduled after the cross-motions could be fully briefed. Joint Motion at 3. Therefore, I rescheduled the oral argument to December 16, 2004. Complainant now requests an extension to December 22, 2004, which is approximately one week after the December 16, 2004 oral argument. Complainant's reply would be to Respondent's November 15, 2004 brief on Count III.¹ Under the Consolidated Rules of Practice, normally a reply brief to a response brief on a motion must be filed within ten (10) days after the response brief is served.² 40 C.F.R. § 22.16(b). I note that Respondent does not object to a limited extension of time for ORE's Count III reply, to December 13, 2004. An extension to December 13, 2004 provides Complainant with four weeks to prepare a reply brief. Moreover, the parties' will be permitted to fill post-oral argument briefs. Accordingly, I GRANT A LIMITED EXTENSION OF TIME, to December 13, 2004, for Complainant filing its reply brief on Count III.

In light of the parties' post-oral argument briefing, to be announced, I am rescheduling for a later date the prehearing exchange for Count I, which shall be filed *in seriatim* manner, according to the following schedule:

¹ I previously granted Respondent's November 16, 2004 motion to file a corrected brief, which corrected formatting and non-substantive errors in the November 15, 2004 filing.

² In the parties' Errata Notice (Oct. 20, 2004) regarding the Joint Motion, the parties clarify that their Joint Motion should not have indicated any period of time for Complainant to file its reply on Count III. Errata Notice at 1.

- February 18, 2005 – Complainant’s Initial Prehearing Exchange
- March 18, 2005 – Respondent’s Prehearing Exchange, including any direct and/or rebuttal evidence
- April 1, 2005 – Complainant’s Rebuttal Prehearing Exchange (if necessary)

Dated: November 23, 2004
Washington, D.C.

Barbara A. Gunning
Administrative Law Judge