

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )  
 )  
SHAWANO COUNTY, )  
NATIONAL SERVICE CLEANING CORP., ) Docket No. V-5-CAA-013  
AND )  
GROW CONSTRUCTION MANAGERS, INC., )  
 )  
Respondents )

ORDER DENYING MOTION FOR EXTENSION OF TIME

AND MOTION TO STAY THE PROCEEDINGS

On August 31, 1995, the Complainant instituted this action against Respondents pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d). The Complaint, as amended on February 18, 1997, charged the Respondents with two counts of violating Section 112 of the CAA and regulations promulgated thereunder, known as the National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 C.F.R. Part 61. Respondents each answered the original Complaint and the Amended Complaint, denying liability.

On June 9, 1997, the undersigned issued an Order Scheduling Hearing which, *inter alia*, directed the parties to file a Joint Set of Stipulated Facts, Exhibits and Testimony on or before July 18, 1997.

In violation of the Order, the parties failed to submit their Joint Set of Stipulated Facts, Exhibits and Testimony or a motion for extension of time to do so, on or before July 18, 1997. Instead, on July 18, 1997, Complainant submitted a mere status report stating that on July 14, 1997, only four days prior to the filing cutoff, it had provided to all three Respondents its initial draft set of joint stipulations.

It was not until July 23, 1997, five days after the filing cutoff for the Joint Stipulations, that the Complainant submitted a Motion for Extension of Time to File Joint Stipulations. The Motion requested that the time be extended approximately six weeks, until August 29, 1997. As acknowledged therein, this Motion was filed only as a result of being "prompted" to do so by an inquiry from the undersigned office.

The Complainant's Motion for Extension violates the Rules governing this proceeding by: (a) failing to indicate that notice of intention to file for an extension was given to the other parties in the case; and (b) by being filed out of time, that is, after the deadline sought to be extended. See, EPA Rule 22.07(b) (40 C.F.R. §22.07).

The Motion proffers no explanation or excuse whatsoever as to why the Complainant did not at least notify the other parties of the Motion and perhaps obtain their consent to the granting of the relief sought therein, prior to filing it.

As to filing after the deadline, the Complainant offers as evidence of "excusable neglect" that: (a) the parties were focusing their attention on settlement discussions which could have obviated the need for the Stipulations; (b) that the Complainant's counsel was out of the office from June 20, 1997 through July 4, 1997; and (c) Complainant's counsel conferred with a senior attorney in her regional office who "believed it would be more efficient to prepare draft stipulations and file a status report informing the court that stipulations had been prepared rather than to file a motion for extension of time [so as] to avoid burdening the court with having to prepare an order in response to the motion."

The first two assertions, constitute good grounds for requesting an extension of time to file the Stipulations but in no way constitute excusable neglect for having not done so before expiration of the filing deadline. The third excuse for neglect is blatantly absurd. It is ridiculous for any attorney to attempt to justify his or her intentional disregard of a Court Order because some other attorney believed it was "efficient" do so.

In this case, if the Joint Stipulations could not be filed in a timely manner, it was in the interest of all of the parties to attempt to reserve the right to submit Stipulations after the deadline, by timely filing a motion for extension. Having failed to do so, the parties have lost that right. The Motion for

Extension is, hereby, **DENIED** and the Stipulations filed after the deadline of July 18, 1997 are not accepted for filing.<sup>(1)</sup>

Approximately a week after the Motion for Extension was filed, on July 31, 1997, Complainant filed a Motion to Stay Proceedings until September 30, 1997. The stated grounds for the stay is that "[t]he parties have reached an agreement in principle which includes the terms of settlement and the total penalty amount. Counsel for the Complainant has prepared a Consent Agreement and Consent Order("CACO") for the parties to sign [and that] [i]t is anticipated that it will take about 60 days to obtain all required signatures . . ." To date, Respondents have not responded to the Motion to Stay Proceedings.

The Hearing in this case is scheduled to begin on September 9, 1997. The 60 day stay requested by Complainant, if granted, would result in the cancellation of the hearing. From experience, the undersigned knows that a mere averment from one party that an agreement "in principle" has been reached and that a draft agreement has been put into circulation does not assure that a final settlement will, in fact, occur. Therefore, the Motion to Stay Proceedings is hereby, **DENIED**. The Hearing date set in this case shall remain in effect and, should no Agreement be finalized beforehand, the parties shall appear for hearing or not do so at their own peril. **However, in the event that all of the Respondents have executed the Consent Agreement and Consent Order prior to the hearing date, at that point, the parties are granted leave to file the partially executed agreement and to move to cancel the hearing date while awaiting execution of the Agreement by Agency authorities.**

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Susan L. Biro

Chief Administrative Law Judge

Dated: \_\_\_\_\_

Washington D.C.

1. If this case goes to hearing, the one or both of the parties may at that time offer into evidence the Stipulations and, after consideration of any objections, the admission of the document will be ruled upon.