

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF:)
)
H. KRAMER & COMPANY,) **Docket No. RCRA-5-2000-014**
)
Respondent.)

ORDER DENYING MOTION FOR EXTENSION OF TIME

By Motion dated February 21, 2001, Respondent moved to modify the prehearing dates in the Prehearing Order.¹ On February 22, 2001, Complainant filed its Opposition to the Motion.

The Motion is hereby **DENIED**.

The Complaint in this matter was filed on September 29, 2000, pursuant to section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. §6928(a), alleging violations of certain hazardous waste regulations in regard to spent refractory brick residue from Respondent's brass and smelting operation which was allegedly abandoned and disposed of without the requisite permit. Complainant seeks a penalty of \$100,320. After Respondent filed its Answer, denying the allegations in the Complaint and raising certain affirmative defenses, a Prehearing Order was issued on December 18, 2000, establishing an *in seriatim* prehearing exchange schedule. Subsequently, on January 11, 2001, Respondent filed a Motion for Accelerated Decision. In its Motion, Respondent asserts, *inter alia*, that Complainant has no evidence that Respondent "abandoned" the material at issue and that Respondent had a policy of reusing the materials. Complainant vigorously opposed the Motion and filed its own Cross-Motion for Accelerated Decision on January 25, 2001. Additional pleadings in support of each party's position have been filed since.

On February 9, 2001, in compliance with the Prehearing Order, Complainant filed its Prehearing Exchange. Pursuant to the scheduling Order, Respondent's Prehearing Exchange is due on March 5, 2001 and Complainant's Rebuttal Prehearing Exchange is due on March 15, 2001. Respondent has moved to modify the prehearing schedule to delay the filing of its Prehearing Exchange and Complainant's reply thereto, while its Motion for Accelerated Decision is pending. Respondent asserts that it would serve the goal of judicial efficiency and economy, and preserve the parties resources as well, if the subsequent exchanges were stayed pending the ruling on accelerated decision since a decision on the cross motions may be obviated the need for the exchanges.

¹ Respondent filed a "corrected" Motion on February 22, 2001.

Section 555(b) of the Administrative Procedure Act requires each Federal agency to proceed to conclude a matter presented to it within a reasonable time. This proceeding was initiated almost five months ago. To delay the prehearing exchange or to stay proceedings while the Cross Motions for Accelerated Decision are pending would not only delay the hearing, should one be necessary, but may also hinder the judge's ability to rule on a motion for accelerated decision.

In Federal court, discovery is strongly favored before summary judgment is granted. *Miller v. United States*, 710 F.2d 656, 666 (10th Cir. 1983); *Bryant v. O'Connor*, 848 F.2d 1064, 1068 (10th Cir. 1988). The prehearing exchange is the mechanism for discovery in EPA's administrative enforcement proceedings. Accelerated decision, like summary judgment, may be granted only if there are no genuine issues of material fact. 40 C.F.R. § 22.20(a). The additional documents which may be provided by Respondent in its Prehearing Exchange and Complainant's response thereto will likely aid the determination as to whether genuine issues of material fact exist and thus may be helpful to the judge in ruling on any motion for accelerated decision.

Accordingly, IT IS ORDERED THAT Respondent's Motion to Modify the Prehearing Schedule is **DENIED**. The Respondent's prehearing exchanges are due as previously ordered.

Susan L. Biro
Chief Administrative Law Judge

Dated: February 27, 2001
Washington, D.C.