

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

In the Matter of:)	
)	Docket No. CAA-03-2010-0408
Thomas Caracio,)	
Leonard N. Zito, Trustee, and)	
Scotta Equipment & Materials Sales LLC,)	
Respondents.)	
)	
Formerly Sandt's Market,)	
Facility.)	

ORDER DENYING COMPLAINANT'S MOTION TO STAY PROCEEDINGS

I. Background

A Prehearing Order was issued in this matter on May 9, 2011, ordering the parties to engage in a settlement conference by May 27, 2011 and to file a status report by June 3, 2011. Complainant submitted a status report on May 25, 2011 indicating that the parties had not reached a settlement. The Prehearing Order further ordered Complainant to submit its Prehearing Exchange by June 24, 2011 and Respondents to submit their Prehearing Exchanges by July 15, 2011. It also required Complainant to submit any Rebuttal Prehearing Exchange by July 29, 2011.

On June 10, 2011, Complainant submitted a Motion to Stay Proceedings ("Motion") requesting that the undersigned stay the proceedings for "a brief period." Motion at 2. On June 17, 2011, Respondent Caracio submitted his Answer with Objections to Complainant's Motion to Stay Proceedings ("Caracio's Answer to Motion"). On June 21, 2011, the undersigned received Respondent Zito's Answer with Objections to Complainant's Motion to Stay Proceedings ("Zito's Answer to Motion") and Complainant's Reply to Respondents' Answer Objecting to Motion to Stay Proceedings ("Reply").

II. Standard for Adjudicating Motions to Stay

Under Section 22.7 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits as set forth in 40 C.F.R. Part 22 ("Rules of Practice"), the undersigned may extend the time to file any document in this proceeding upon its own initiative or upon a timely motion showing that the extension would be for good cause and would not cause undue prejudice to other parties. 40 C.F.R. § 22.7(b). A stay of proceedings is a matter of discretion for the presiding judge. *See*

Landis v. N. Am. Co., 299 U.S. 248, 254-55 (1936).

The Rules of Practice state that the undersigned “shall . . . avoid delay” and may take measures necessary “for the efficient, fair and impartial adjudication of issues.” 40 C.F.R. § 22.4(c). In deciding whether to stay a proceeding, EPA administrative law judges have considered the following factors: whether or not the stay will serve the interests of judicial economy, result in unreasonable or unnecessary delay, or eliminate any unnecessary expense and effort; the extent, if any, of hardship resulting from the stay and of adverse effect on the judge’s docket; and the likelihood of records relating to the case being preserved and of witnesses being available at the time of any hearing. *Unitex Chem. Corp.*, EPA Docket No. TSCA-92-H-08, 1993 EPA ALJ LEXIS 146 at *3 (ALJ, Order Staying Proceedings, March 18, 1993) (granting a stay of one year or until decision by D.C. Circuit, whichever occurs first, where D.C. Circuit had already scheduled briefs and oral argument and where its decision would affect most or all claims in the administrative proceeding). Motions to stay should be granted when doing so will save judicial resources, but motions should also set forth sufficient reasons to delay the proceeding. *See Diomed, Inc. v. Total Vein Solutions, LLC*, 498 F. Supp. 2d 385, 386-87 (D. Mass. 2007).

Moreover, a federal trial court generally may not grant a stay so extensive that it is “immoderate or indefinite” in duration, and a trial court may abuse its discretion by issuing “a stay of indefinite duration in the absence of a pressing need.” *Landis*, 299 U.S. at 255, 257. In determining whether to stay proceedings indefinitely, a “pressing need” is identified by balancing interests favoring a stay against interests frustrated by a stay, but “[o]verarching this balancing is the court’s paramount obligation to exercise jurisdiction timely in cases properly before it.” *Cherokee Nation of Oklahoma v. United States*, 124 F.3d 1413, 1416 (Fed. Cir. 1997).

III. Parties’ Arguments

In its Motion, Complainant requests a stay “to enable Counsel for EPA to determine whether certain pending investigations will require disclosures to opposing Counsel and/or the Tribunal.” Motion at 2. Complainant asserts that it will provide a status update on this matter no later than 30 days from an order granting stay. *Id.* Complainant states it does not know whether Respondents oppose its Motion. *Id.* at 2 fn. 1.

Respondent Caracio’s Answer to Motion incorporated and adopted by reference, and by exhibit, Zito’s Answer to Motion, which had not yet been filed with this office.¹ Zito’s Answer to Motion asserts three basic objections to Complainant’s Motion. First, it claims that the Motion does not adequately state the basis for staying the proceedings. Zito’s Answer to Motion ¶ 2. Second, Zito’s Answer to Motion states that the Complainant “has not averred that he has proceeded with due diligence” and that such an issue “cannot be determined by the Court on the basis of the Motion.” *Id.* ¶¶ 2 and 3. Third, Respondent Zito asserts that delay caused by staying the proceedings will cause Respondent Zito prejudice. *Id.* ¶ 4. Respondent Zito requests that the

¹ The undersigned received Zito’s Answer to Motion on June 21, 2011.

undersigned only consider granting the Motion after the Prehearing Exchange is complete and that the undersigned determine whether Complainant has acted with due diligence and offered its Motion for an appropriate purpose. *Id.* ¶¶ 6 and 7. Finally, Respondent Zito “urges” the undersigned to conduct a hearing on this Motion or, in the alternative, to require Complainant to appear *in camera* to support its Motion in order to determine its merit. *Id.*

In its Reply, Complainant states that it requests to stay the proceedings so that it can determine what disclosures to opposing counsel and the undersigned must be made from its investigation and so that it can determine if information from its investigation may affect its approach to this proceeding. Reply at 2. Complainant states that this investigation involves confidential issues or materials and that Complainant’s Motion “seeks to balance the impact on this proceeding with the potential impact on the pending investigation which might result from premature or unnecessary disclosures.” *Id.* Complainant further avers that proceeding with the “Prehearing Exchange or other litigation-related activities” would not be “in the interests of justice or judicial economy” at this time. *Id.* Complainant requests that the undersigned grant its Motion or, alternatively, that the undersigned allow Complainant to present information on an *in camera* and *ex parte* basis so that the undersigned may determine the merits of the Motion and what information Complainant may need to disclose to Respondent. *Id.* at 2-3.

IV. Discussion

The rule for motions in section 22.16 states that all motions shall:

State the grounds therefor, with particularity; [and]

Be accompanied by any affidavit, certificate, other evidence or legal memorandum relied upon.

40 C.F.R. §§ 22.16(a)(2) and (4). Complainant’s Motion is simply too vague and lacking in articulate, reasoned justification to warrant that it be granted. It does not specify the type of investigation, the type of privilege, nor the length of stay needed. Complainant’s overly vague reasons for requesting a stay, as provided in its Motion and Reply, fail to demonstrate the good cause required to justify an extension under 40 C.F.R. § 22.7(b). Complainant has not sufficiently explained why a pending investigation of some unidentified sort should inhibit its ability to file its Prehearing Exchange or why continuing in this proceeding would cause it hardship. *See Landis*, 299 U.S. at 255; *Diomed, Inc.*, 498 F. Supp. 2d at 386-87. As to the request in Complainant’s Reply for an additional opportunity to present additional information *in camera* and *ex parte* to substantiate its Motion to Stay Proceedings, that information should have been provided with the pending Motion. EPA officers are mandated to preserve the confidentiality of information claimed confidential under 40 C.F.R. § 22.22(a)(2).

If Complainant believes certain documents should not be exchanged due to privilege, Complainant may claim privilege in its Prehearing Exchange by briefly identifying the

documents and stating the basis for the assertion of privilege in regard thereto. If the pending investigation later reveals that these documents or further documents should be exchanged, Complainant may then file a motion to supplement its Prehearing Exchange. See 40 C.F.R. §22.19(f). Because Complainant may refrain from exchanging privileged documents and may later move to supplement its Prehearing Exchange, it is unclear what resources may be saved by staying proceedings at this time. See *Diomed, Inc.*, 498 F. Supp. 2d at 386-87.

Moreover, the undersigned must weigh the effect of delay caused by a stay on the opposing parties and on the progression of the proceedings. *Id.* Although Respondents fail to show what prejudice they may experience from delay, the relatively slow progress of this proceeding to date² provides reason to avoid unnecessary delay and adhere to the deadlines set forth in the Prehearing Order. See 40 C.F.R. §§ 22.4(c).

Complainant's request for a stay for a "brief period" also does not provide sufficient specificity as to the time required for an extension and is therefore indefinite. Indefinite extensions are rarely granted, and Complainant has not shown a "pressing need" for an indefinite stay of proceedings. See *Landis*, 299 U.S. at 255.

Accordingly, Complainant's Motion is hereby **DENIED**. Complainant is **ORDERED** to comply with the Prehearing Order and submit its Prehearing Exchange or, alternatively, a fully executed Consent Agreement and Final Order(s) ("CAFO") by June 24, 2011. For the foregoing reasons, Complainant's alternative request to present information to the undersigned *in camera* and *ex parte* is hereby **DENIED**. Based on the denial of Complainant's Motion, Respondents' requests (1) for determination of the merits of the Motion after Prehearing Exchange, (2) for determination of whether Complainant has acted in due diligence, (3) to order Complainant to appear *in camera*, and (4) for hearing on the Motion are hereby **DENIED** as moot.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

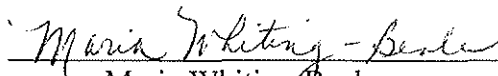
Dated: June 23, 2011
Washington, D.C.

² The Complaint was filed in September of 2010, and Prehearing Exchange will not be complete until late July of this year.

In the Matter of Thomas Caraco, Leonard N. Zito, Trustee, and Scott Equipment & Materials Sales LLC, Former Sandt's Market, Respondents
Docket No. CAA-03-2010-0408

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Denying Complainant's Motion To Stay Proceedings**, dated June 23, 2011, was sent this day in the following manner to the addressees listed below.



Maria Whiting-Beale
Staff Assistant

Dated: June 23, 2011

Original And One Copy By Pouch Mail To:

Lydia A. Guy
Regional Hearing Clerk (3RC00)
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Philadelphia, PA 19103-2029

Copy By Pouch Mail And Facsimile To:

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Benjamin M. Cohan, Esquire
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Copy By Regular Mail And Facsimile To:

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