UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
HALL-KIMBRELL ENVIRONMENTAL SERVICES, INC.	)	Docket Nos. TSCA II-ASB-92-0235, TSCA VII-90-T-363A, VII-91-T-414, 424, 425, 447 and 570A, VII-92-T-557; TSCA-(ASB)-VIII-90-26 and 30-39; and TSCA-09-91-0024
	)	
Respondent	)	
	)	
	)	

ORDER DENYING MOTION FOR STAY
AND GRANTING EXTENSION OF TIME

On October 13, 1992, Respondent filed a motion requesting a stay of proceedings in the cases filed in Region II, Region VII and Region VIII. The basis for the motion is that Respondent has filed a complaint in the Federal District Court for the District of Columbia against the Administrator of the Environmental Protection Agency (EPA) and against EPA's Assistant Administrator, Office of Pesticides and Toxic Substances, seeking declaratory relief, injunctive relief and mandamus. The basis for the District Court suit is that EPA acted beyond the scope of its statutory authority in bringing the aforementioned administrative actions against the Respondent based on allegations that drywall/sheetrock and hard plaster walls/ceilings are suspect materials under the Asbestos Hazard Emergency Response Act (AHERA), 15 U.S.C. §2641-2654. The motion to stay acknowledges that resolution of the issue is central to disposition of the administrative complaints before the Presiding Judge and argues that the matter is appropriate for resolution

before the Federal District Court because it involves a pure question of law. Respondent avers that determination of a stay is an issue committed to the sound discretion of the Presiding Judge and that a stay of these proceedings will allow the Federal District Court an opportunity to resolve the issue.

Complainant, on October 22, 1992, filed an opposition to the Respondent's motion to stay proceedings. Complainant notes that the latest hearing schedule in these actions set a date for Complainant to file a motion for accelerated decision on the issue whether drywall, wallboard and hard plaster should be considered suspect materials under AHERA, the same issue raised in the Federal District Court complaint brought by the Respondent. The opposition notes that the Complainant filed the aforementioned motion for accelerated decision in the Region VII cases on October 16, 1992. Complainant argues that Respondent does not explain why the Federal District Court is a more appropriate forum for resolution of the suspect materials issue than this administrative forum, and therefore has not met its burden of stating the grounds for the motion to stay, as required by Section 22.16(a)(2) of the EPA Rules of Practice (Rules), 40 C.F.R. §22.16(a)(2). Complainant further avers that, when two forums have concurrent jurisdiction, the court in which jurisdiction first attaches has priority to consider the case. Since these administrative proceedings were filed long before Federal District Court case, Complainant contends that the Presiding Judge has priority and should continue to resolve the

suspect materials issue. Complainant also takes the position that merely describing the issue as a pure question of law does not render this forum incompetent to decide the motion, since Administrative Law Judges routinely make decision on matters of law. In addition, Complainant avers that the motion to stay will unnecessarily delay these administrative proceedings and that the Respondent is forum shopping.

On analysis, the Complainant's position is better taken, particularly with regard to the priority of decision and to the determination of issues of law in administrative proceedings. As the Respondent correctly points out, the granting of a stay of proceedings at the trial court level is a matter of discretion for the Presiding Judge. In this regard, a major factor to be considered is whether a stay will serve the interest of judicial economy, including whether a stay will result in unnecessary or unreasonable delay in resolution of the proceedings involved. Also to be taken into account is whether a stay would eliminate unnecessary expense and effort on the part of the parties and the Presiding Judge. In the present case, a stay would result in an extended delay of the administrative proceedings, while the Federal case goes through the District Court processing. This cannot be considered a reasonable delay, particularly since these administrative proceedings have advanced to a stage where they are close to being at issue and set for hearing. Moreover, there is no reason why the legal and/or factual disposition of the suspect materials issue cannot be resolved as well in these

administrative proceedings as in the Federal District Court. The Complainant properly notes that legal issues are disposed of as a matter of course by Administrative Law Judges in administrative cases. The Respondent has presented no rationale establishing that the Federal District Court is a more appropriate forum and the substantial attendant delay in these administrative proceedings indicates that the interest of judicial economy is best served by rejecting the requested stay. Accordingly, Respondent's motion for a stay is denied.

On October 29, 1992, Respondent moved for an extension of time to respond to the motion for partial accelerated decision filed by the Complainant in the Region VII cases, until after the Presiding Judge has ruled on the motion for stay of proceedings discussed above. Complainant in the Region VII proceedings filed an opposition to the Respondent's request for an extension, in which it took the position that the Respondent should be required immediately to submit its answer to the motion for partial accelerated decision. In light of the importance of the suspect materials issue, it is appropriate to grant a short extension for the Respondent to answer the motion for partial accelerated decision, particularly where this can be accommodated without delaying the oral argument thereon set for December 3, 1992. Accordingly, Respondent is given until November 16, 1992 to answer the Complainant's motion for partial accelerated decision. Similarly, the Complainant is hereby given additional time, until November 27, 1992, to reply to Respondent's answer. The

prehearing conference relating thereto set for December 3, 1992 will remain as scheduled.

SO ORDERED.

Daniel M. Head
Administrative Law Judge

Dated: November 6, 1992
Washington, DC

IN THE MATTER OF HALL-KIMBRELL ENVIRONMENTAL SERVICES, INC.
Respondent, Docket Nos. TSCA II-ASB-92-0235; TSCA-VII-90-T-363A, VII-91-414, 424, 425, 447, 450 and 570A, and VII-92-T-557; TSCA-(ASB)-VIII-90-26, 90-30 through 39; and TSCA-09-91-0024.

CERTIFICATE OF SERVICE

I certify that the foregoing Order Denying Motion for Stay and Granting Extension of Time, dated [illegible], was sent in the following manner to the addressees listed below:

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Dated: _____
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