

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO

3 JORGE FRANCISCO SÁNCHEZ,
4 et al.,

5 Plaintiffs,

6 v.

7 ESSO STANDARD OIL DE PUERTO
8 RICO, INC.,

9
10 Defendant.

Civil No. 08-2151 (JAF)

11 **ORDER**

12 On December 5, 2008, we entered a preliminary injunction against
13 Defendant Esso Standard Oil de Puerto Rico, Inc., requiring Defendant
14 to submit names of experts in environmental damage, to propose a
15 comprehensive site assessment at Defendant's expense, and to notify
16 the relevant regulatory agencies of the injunction. Docket No. 22.
17 Defendant moved for reconsideration of the injunction on December 19,
18 2008, Docket No. 33; we denied the motion on December 22, 2008,
19 Docket No. 34. Defendant notified this court on January 14, 2009,
20 that it had filed an interlocutory appeal in the First Circuit
21 challenging the preliminary injunction and our subsequent refusal to
22 countermand the order. Docket No. 47. On January 30, 2009, Defendant
23 moved under Federal Rule of Civil Procedure 62(c) to stay the
24 injunction pending the appeal, Docket No. 69; Plaintiffs opposed on
25 February 16, 2009, Docket No. 80.

1 “While an appeal is pending from an interlocutory order . . .
2 that grants . . . an injunction, the court may suspend, modify,
3 restore, or grant an injunction on . . . terms that secure the
4 opposing party’s rights.” Fed. R. Civ. P. 62(c). In ruling on a stay
5 under Rule 62(c), we must consider

6 (1) whether the stay applicant has made a strong
7 showing that he is likely to succeed on the
8 merits; (2) whether the applicant will be
9 irreparably injured absent a stay; (3) whether
10 issuance of the stay will substantially injure
11 the other parties interested in the proceeding;
12 and (4) where the public interest lies.

13 Hilton v. Braunskill, 481 U.S. 770, 776 (1987).

14 We believe the issuance of a stay would substantially injure
15 Plaintiffs and frustrate the public interest. See Hilton, 481 U.S. at
16 776. In our order of December 5, 2008, we found that Defendant
17 operated Plaintiffs’ service station from 1982 until October 2008.
18 Docket No. 22. In contravention of federal regulations, Defendant
19 has, inter alia, failed to (1) report, investigate, or clean up
20 spills from its underground gasoline storage tank; (2) take immediate
21 action to prevent additional spills or to identify and mitigate such
22 spills; (3) undertake an initial assessment of the affected property
23 and surrounding groundwater; (4) consider and remedy potential lead
24 contamination at the site from use of leaded gasoline between 1982
25 and 1988; (5) give notice of its cessation of operation of the
26 service station; and (6) assess possible contamination of the public
27 watershed of the Río Grande de Loíza. Id. For instance, initial

1 studies indicated that Defendant's operations have released
2 carcinogenic benzene into the water beneath the service station at
3 a concentration of 2,800 micrograms per liter ($\mu\text{g}/\text{l}$), an astronomical
4 figure in comparison to the federal maximum of 5 $\mu\text{g}/\text{l}$ for groundwater
5 established by the Environmental Protection Agency. Id. Testing of
6 subsoil beneath the station revealed the presence of Total Petroleum
7 Hydrocarbon (TPH) at 3,290 micrograms per kilogram ($\mu\text{g}/\text{kg}$) when the
8 maximum acceptable level established by the Environmental Quality
9 Board of Puerto Rico is 100 $\mu\text{g}/\text{kg}$. Id. We found that Defendant has
10 known about the discharge of hazardous materials at the station since
11 1993, but has only made limited effort to investigate the extent of
12 the contamination and virtually no attempt to mitigate the potential
13 harm to Plaintiffs and the public at large. Id.

14 Since our entry of preliminary injunction on December 5, 2008,
15 Defendant has participated fully in proceedings to fashion interim
16 measures. See Docket Nos. 38, 40. On December 22, 2008, Defendant
17 appeared with Plaintiffs to discuss our appointment of experts to
18 assess the environmental damage at the service station in this case.
19 Id. On January 15, 2009, Defendant filed a joint motion with
20 Plaintiffs proposing a course of investigations to implement a
21 comprehensive site assessment. Docket No. 54. The instant motion,
22 filed on January 30, 2009, appears to be a belated delay tactic
23 employed in bad faith. Docket No. 69. It must not impede the
24 investigations to which Defendant previously consented. See Docket

1 No. 54. Because of the threat to Plaintiff and the general public
2 from further delay, Defendant's motion does not meet the requirements
3 for the issuance of a stay. See Hilton, 481 U.S. at 776.

4 Accordingly, we **DENY** Defendant's motion for a stay from
5 preliminary injunction, Docket No. 69.

6 **IT IS SO ORDERED.**

7 San Juan, Puerto Rico, this 18th day of February, 2009.

8 s/José Antonio Fusté
9 JOSE ANTONIO FUSTE
10 Chief U.S. District Judge