

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)	
)	
Williams Pipe Line Company)	
and L&C Services, Inc.)	CAA Appeal No. 97-3
)	
Docket No. VII-93-CAA-112)	
)	
)	

ORDER DISMISSING APPEAL

On February 10, 1997, Complainant, U.S. EPA Region VII, filed what it styled a "Notice of Appeal"¹ from an Initial Decision dismissing the Region's complaint in the above-captioned matter. The Notice was combined with an Motion For Extension of Time requesting an additional 30 days to file a brief in support of the appeal. In support of this request, the Region stated:

Because of the national importance of this decision's effect on the Agency's asbestos NESHAP enforcement and compliance monitoring program, and its effect on the Agency's regulatory program, it is necessary to coordinate an Agency-wide position with the Office of General Counsel, the Office of Enforcement and

¹Under 40 C.F.R. § 22.30(a):

The notice of appeal shall set forth alternative findings of fact, alternative conclusions regarding issues of law or discretion, and a proposed order together with relevant references to the record and the initial decision.

The Region's "Notice of Appeal" merely states that "EPA hereby gives notice that it appeals the decision of the Administrative Law Judge and requests that the Environmental Appeals Board reverse or correct the decision of the Administrative Law Judge."

Compliance Monitoring, each Regional Office, and the Office of Air and Radiation.

The additional time, which will not present any prejudice to Respondent L&C Services, Inc., is necessary to ensure that every office has the opportunity to participate and be heard in the appeal in this matter.

Notice of Appeal and Motion for Extension of Time at 2. Absent the requested extension, the Region's appellate brief was due on February 20, 1997. On February 14, 1997, the Board sua sponte extended the time for the Region to submit its appellate brief by seven days to allow the Board sufficient time to consider the extension request and any opposition thereto.² This extension was explicitly conditioned on the Region's submission by no later than February 20, 1997, of a revised notice of appeal specifying the issues raised for review by the Board.

On February 25, 1997, not having received the Region's revised notice of appeal, the Clerk of the Board contacted the Regional attorney assigned to this matter to determine if the revised notice had been sent and, if so, in what manner. The Clerk was told that the revised notice was sent by certified mail on February 18, 1997. The Board finally received the Region's revised notice on February 26, 1997, six days late.

²On February 19, 1997, Respondent, L&C Services, Inc. ("L&C"), filed a response opposing the Region's request for an extension of time. *Opposition to Motion for Extension of Time and Request to Strike Notice of Appeal* ("L&C Opposition").

Because the Region failed to submit a more detailed notice of appeal to the Board by February 20, 1997, and because the condition upon which the extension of the deadline for filing the appellate brief was thus not satisfied, the Region's "Notice of Appeal" is hereby dismissed with prejudice as untimely.³

So ordered.

Dated: 2/27/97

ENVIRONMENTAL APPEALS BOARD

By: _____ /s/
Edward E. Reich
Environmental Appeals Judge

³While it may be unfortunate for the Region that the revised notice of appeal was not received by the February 20, 1997 deadline, where a party chooses to send a document by certified mail only two days before an applicable deadline, the party must assume the consequences of a late delivery. *Cf. In re Everwood Treatment Company, Inc. and Cary W. Thigpen*, RCRA (3008) Appeal No. 95-1 at 2 (EAB, Oct. 22, 1996) (Order Dismissing Motion for Reconsideration).

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Dismissing Appeal in the matter of Williams Pipe Line Company and L&C Services, Inc., CAA Appeal No. 97-3, were sent to the following persons in the manner indicated:

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Dated: 2/27/97

/s/
Mildred T. Johnson
Secretary