

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of

Coleman Trucking, Inc.,

Docket No. 5-CAA-96-005

Respondent

ORDER DENYING MOTION FOR JUDGMENT
ON THE PLEADINGS

Coleman Trucking, Inc. ("Coleman"), seeks judgement on the pleadings pursuant to Rules 22.16 and 22.20(a) of the Consolidated Rules of Practice, 40 C.F.R. § 22.16 & 22.20(a), as well as Rule 12(c) of the Federal Rules of Civil Procedure. Not unexpectedly, the U.S. Environmental Protection Agency ("EPA") opposes respondent's motion.¹ For the reasons that follow, Coleman's motion is denied.

This case was initiated by EPA pursuant to Section 113(d)(1) of the Clean Air Act. 42 U.S.C. § 7413(d)(1). In the administrative complaint, EPA charged Coleman with two violations of the Clean Air Act relating to the manner in which the respondent removed asbestos from an elementary school. EPA filed the complaint with the Regional Hearing Clerk on May 30, 1996, within one year of the date of the alleged violations. EPA mailed the complaint to Coleman, with the return receipt being signed by respondent on June 3, 1996. The return receipt was signed one year and two days after the alleged violations.

The crux of Coleman's motion for judgment on the pleadings is that the present action is time-barred. In that regard, Coleman points to the language of Section 113(d)(1) of the Clean Air Act which provides, "[t]he Administrator's authority under this paragraph shall be limited to matters where ... the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action." Because the alleged violations in this case occurred on or before June 1, 1995, Coleman maintains that the present action was not initiated until one year and two days later, when the complaint was served upon respondent.² Coleman argues, therefore, that the action is barred by the one-year statute of limitations contained in Section 113(d)(1).

In opposing Coleman's motion, EPA argues that this action was initiated on May 30, 1996, when the complaint was filed with the Regional Hearing Clerk, and not when the respondent signed the return receipt. Thus, under EPA's interpretation of events the complaint was timely filed.

EPA's position that the complaint was filed within the applicable one-year statute of limitations is correct. While Section 113(d)(1) of the Clean Air Act does not explain what is meant by the critical phrase "initiation of the administrative action", such an explanation can be gleaned from the Consolidated Rules of Practice. See 40 C.F.R. Part 22.

With respect to these rules, the parties correctly note that Rule 22.13 does not explain when an action is "initiated." Nonetheless, consideration of the Consolidated Rules as a whole establishes that an action subject to these rules is initiated when the complaint is filed with the Regional Hearing Clerk. For example, Rule 22.05 provides that the original of the complaint and the original of the answer is to be filed with the Regional Hearing Clerk. Pursuant to Rule 22.05(c)(5), the Regional Hearing Clerk may refuse to file any document which does not meet the applicable filing requirements. In addition, Rule 22.05 makes clear that it is the Regional Hearing Clerk who maintains the original file. Rule 22.27(a), in turn, provides that the initial decision of the Presiding Officer is to be filed with the Regional Hearing Clerk and that upon receipt of the initial decision, it is the Regional Hearing Clerk who forwards a copy of the decision to the parties.

Thus, from the beginning of a case to its end, it is the Regional Hearing Clerk who maintains what amounts to as the official file. The case is initiated when the complaint is filed with the Regional Hearing Clerk and it is concluded when the initial decision of the Presiding Officer becomes a final order of the Environmental Appeals Board after the decision is served upon the parties by the Regional Hearing Clerk.

Moreover, interpreting the Consolidated Rules of Practice as providing that an action is initiated when the complaint is filed with the Regional Hearing Clerk produces a result consistent with Rule 3 of the Federal Rules of Civil Procedure. Rule 3, Fed. R.Civ. P., provides, "A civil action is commenced by filing a complaint with the court."

Accordingly, for the foregoing reasons, Coleman Trucking Company Inc.'s motion for judgment on the pleadings is denied.

Carl C. Charneski
Administrative Law Judge

Issued: November 6, 1996
Washington, D.C.

IN THE MATTER OF COLEMAN TRUCKING, INC., Respondent

Docket No. 5-CAA-96-005

Certificate of Service

I certify that the foregoing Order Denying Motion for Judgment on the Pleadings, dated November 6, 1996, was sent this day in the following manner to the below addressees.

Original by Regular Mail to:

Ms. Estelle Patterson
Acting Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Copy by Regular Mail to:

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Marion Walzel
Legal Staff Assistant

Dated: November 6, 1996

¹ Coleman's reply to EPA's opposition to its motion has been accepted for filing.

² As noted by respondent, service of a complaint is complete when the return receipt is signed. 40 C.F.R. § 22.07(c).