

The Board did not receive the Region's revised notice until February 26, 1997, six days late. The notice indicates that it was sent by certified mail on February 18, 1997. By order dated February 27, 1997, the Board dismissed the Region's notice of appeal in the above-captioned matter with prejudice as untimely. *See Order Dismissing Appeal*. By motion dated February 27, 1997, the Region requests that the Board reconsider its order dismissing the appeal. *Motion for Reconsideration of Order Dismissing Appeal* ("Motion").

The Region states that its revised notice of appeal "was timely filed in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, the provisions governing this procedure." Motion at 1 (emphasis in original). In support of this assertion, the Region cites to 40 C.F.R. §§ 22.05(b)(2) (Service of documents other than complaint, rulings, orders, and decisions) and 22.07(c) (Service by mail). Section 22.05(b)(2) states, in part:

All documents other than the complaint, rulings, orders, and decisions, may be served personally or by certified or first class mail.

Section 22.07(c) states, in part:

Service of the complaint is complete when the return receipt is signed. Service of all other pleadings and documents is complete upon mailing.

The Region concludes that because its revised notice of appeal was *served* before the applicable deadline, it was timely *filed* with the Board. We disagree.

The regulations clearly distinguish between the service and the filing of a document. Compare 40 C.F.R. § 22.05(a) (*Filing of pleadings and documents*) with 40 C.F.R. § 22.05(b) (*Service of pleadings and documents*). Indeed, this distinction is made clear in section 22.07(c), the very section relied on by the Region in support of its Motion. This section states, in part:

Where a pleading or document is *served* by mail, five (5) days shall be added to the time allowed by these rules for the *filing* of a responsive pleading or document.

40 C.F.R. § 22.07(c) (emphasis added). Thus, the Region's reliance on Section 22.07(c) is misplaced.

Under 40 C.F.R. § 22.30 a notice of appeal and an accompanying appellate brief must be *filed* with the Board within 20-days after service of the initial decision. It is well settled that in determining whether a document has been timely *filed*, the Board looks to the date the document was received, not the date of mailing. See *In re Outboard Marine Corp.*, CERCLA Penalty Appeal No. 95-1, slip op. at 3 (EAB, Oct. 11, 1995), 6 E.A.D. ___ (in order to be considered timely filed a notice of appeal must be *received* by the Board within the deadline set forth in 40 C.F.R. § 22.30(a)); *In re Production Plated Plastics, Inc.*, 5 E.A.D. 101, 103 n.2 (EAB, 1994) (It is well established that for purposes of determining the timeliness of an appeal the Agency looks to the date the appeal is received; "There is nothing in section 22.30(a) to suggest that *servicing* a document by

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Denying Motion for Reconsideration 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:

Certified Mail
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Dated: 2/28/97

_____/s/
Mildred T. Johnson
Secretary