



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)
)
Wesco Construction Co.,) **Docket No. CAA-03-2018-0054**
)
Respondent.)

ORDER OF REMAND

This proceeding was initiated by the filing of an Administrative Complaint with the Regional Hearing Clerk, Region III, U.S. Environmental Protection Agency, on February 1, 2018. The Agency served a copy of the filed Complaint on Respondent on February 17, 2018.

Respondent failed to file an Answer with the Regional Hearing Clerk within 30 days after service of the Complaint. *See* 40 C.F.R. § 22.15(a). However, on March 14, 2018, a representative of Respondent sent a letter in response to the Complaint directly to counsel for the Agency. *See* Submission of Respondent’s Answer by the Complainant (Aug. 14, 2018). Some five months later, counsel for the Agency, apparently deciding to construe the letter as an Answer, filed the letter with the Regional Hearing Clerk on August 14, 2018. The next day, the Regional Hearing Clerk forwarded this matter to the Office of Administrative Law Judges pursuant to 40 C.F.R. § 22.21(a).

I was designated to preside over this proceeding on August 17, 2018. On September 17, 2018, I issued an Order for Respondent to File Answer (“Order”). As noted in the Order, Respondent’s letter failed in several ways to comply with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1 to 22.45 (“Rules of Practice”), with respect to the filing of an Answer. *See* Order at 1-2; 40 C.F.R. § 22.15. Accordingly, I ordered Respondent “to file an Answer that complies with the Rules of Practice and to clearly state if it desires a hearing upon the issues.” Order at 2. The Order was sent to Respondent by certified mail the same day it was issued. After two delivery notices, the Order was returned to this Tribunal on October 16, 2018, as “unclaimed” and “unable to forward.”

For proceedings commenced in an EPA Regional Office, the Regional Judicial Officer serves as Presiding Officer “until the respondent files an answer[.]” 40 C.F.R. § 22.4(b). “When an answer is filed, the Regional Hearing Clerk shall forward a copy of the complaint, the answer, and any other documents filed in the proceeding to the Chief Administrative Law Judge who shall serve as Presiding Officer or assign another Administrative Law Judge as Presiding Officer.” 40 C.F.R. § 22.21(a). Although Respondent submitted a letter to Agency counsel, this

letter was insufficient to serve as an Answer because it “was not filed with the Regional Hearing Clerk, did not request a hearing upon the issues, and does not clearly and directly admit, deny, or explain *each* of the factual allegations contained in the complaint.” *See* Order at 2. Further, Respondent failed to file an Answer with this Tribunal. Because a proper Answer has not been submitted, it is inappropriate for this Tribunal to retain jurisdiction of this matter or to continue to serve as Presiding Officer.

Therefore, this matter is **REMANDED** to the Regional Judicial Officer, Region III, U.S. Environmental Protection Agency for disposition consistent with the Rules of Practice.

SO ORDERED.



Christine Donelian Coughlin
Administrative Law Judge

Dated: October 26, 2018
Washington, D.C.

In the Matter of *Wesco Construction Co.*, Respondent.
Docket No. CAA-03-2018-0054

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order of Remand**, dated October 26, 2018, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.



Matt Barnwell
Attorney-Advisor

Original and One Copy by Personal Delivery to:

Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004

Copy by Electronic and Regular Mail to:

Philip Yeany, Esq.
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 3
Mail Code 3RC50
1650 Arch Street
Philadelphia, PA 19103-2029
Email: yeany.philip@epa.gov
For Complainant

Copy by Regular Mail to:

Donald Dolittle
President
Wesco Construction Co.
902 Saginaw Road
Oxford, PA 19363
For Respondent

Dated: October 26, 2018
Washington, D.C