UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
AutoAlliance International, Inc.	)	Docket No. 5-EPCRA-98-023
	)	
Respondent,	)	

ORDER ON MOTIONS

In this proceeding under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA" or "Act"), 42 U.S.C. Section 11001 et seq., involving nineteen counts[(1)], each alleging a violation of Section 313 of EPCRA, EPA has filed a Motion to Strike Respondent AutoAlliance's Affirmative Defenses Two Through Four and AutoAlliance has filed a Motion for Accelerated Decision together with a flurry of subsequent exchanges[(2)] relating to the single issue underlying these Motions: whether EPA is barred from proceeding with this action because, asserts Autoalliance, it was filed too late and therefore barred by the applicable statute of limitations, 28 U.S.C. Section 2462.

Each of the Counts pertains to documentation required to be maintained in connection with a report known as Form R, the Toxic Chemical Release Inventory Reporting Form. See 40 C.F.R. Section 372.10. All of the Counts pertain to documentation required for calendar year 1992. The Form R's for 1992 were due on or before July 1, 1993 and the supporting documentation for any given year must be maintained for three years from the date of that year's submission.

In this case, the Complaint attempts to aver[(3)] that the Respondent submitted each of the Form R's on June 30, 1993. Therefore it had to keep the specified documentation until July 1, 1996. It is further alleged that during an EPA

inspection of the Respondent's facility on May 4 and 5 , 1994, Respondent refused to supply the required documentation relating to the Form R's.

Under the applicable statute of limitations, as set forth at 28 U.S.C. Section 2462, an action must be commenced within five years from the date when the claim first accrued. For the purpose of this Order it is assumed that EPA had to commence this action by July 1, 1998.[(4)] EPA filed its Complaint with the Regional Hearing Clerk on June 26, 1998.

The Consolidated Rules of Practice, 40 C.F.R. Part 22, ("Consolidated Rules"), provide at Section 22.05(a)(1) and (2), *Filing of pleadings and documents*, that: "...the original and one copy of the complaint, ...shall be filed with the Regional Hearing Clerk ... [and] a certificate of service shall accompany each document filed or served." A separate section, 22.05(b), addresses the subject of proper service by providing at (b)(1): "*Service of complaint*. (i) Service of a copy of the signed original of the complaint, together with a copy of these rules of practice, may be made personally or by certified mail, return receipt requested, on the respondent (or his representative)."

Autoalliance takes the position that, under the Consolidated Rules, Section 22.13, a penalty action is instituted when a Complaint is issued, not when it is filed with the Regional Hearing Clerk and that the act of issuing "means *sending out the complaint to the respondent*." Respondent's Memorandum in Support of Motion for Accelerated Decision and Memorandum in Response to EPA's Motion to Strike Affirmative Defenses at 5, (italics in quotation). According to this view, the Complaint was defective because there was no service on the Respondent before filing, as the Complainant sent it and the Certificate of Service to the Respondent's registered agent at an address that ostensibly had been outdated for two years, causing it to be returned as undeliverable by the postal service.

Autoalliance's strained interpretation of determining when an action is initiated is rejected. The Court agrees with the reasoning expressed by Administrative Law Judge Carl C. Charneski In the Mattter of Coleman Trucking, Inc., Docket No. 5-CAA-96-005, 1996 EPA ALJ LEXIS 106, November 6, 1996, who rejected the argument that an action is initiated when the complaint is served on a Respondent, holding instead that "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." Id. at *3. Further, the Court agrees with Judge Charneski that this interpretation is also in harmony with the Federal Rules of Civil Procedure, Rule 3, which provides that an "action is commenced by filing a complaint with the court." Id. at *4.

Accordingly, AutoAlliance's September 8, 1998 Motion for Accelerated Decision is DENIED, and EPA's Motion to Strike Autoalliance's Affirmative Defenses Two, Three, and Four, is GRANTED.

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William B. Moran
United States Administrative Law Judge

Dated: May 13, 1999

1. The Complaint contains apparent clerical errors. For example, the Counts chronically assert that the Form R for 1992 is required to be submitted on or before July 1, *1992*, instead of July 1, 1993, as provided by 40 C.F.R. Section 372.30 (d). In other instances it asserts that Respondent submitted its 1992 Form R on June 20, *1992.* EPA should be more attentive to these details.

2. Respondent has filed a Memorandum in Support of its Motion for Accelerated Decision and Memorandum in Response to EPA's Motion to Strike Affirmative Defenses, a Reply Memorandum in Support of its Motion for Accelerated Decision on the Statute of Limitations Issue, and a Surreply Memorandum Regarding Statute of Limitations. For its part, EPA has filed a Memorandum in Response to Respondent's Motion for Accelerated Decision and a Memorandum in Response to Respondent's Reply Memorandum.

3. The errors in the drafting of the Complaint are referred to in footnote 1.

4. While the Court recognizes that EPA has argued that the action could be commenced much later than July 1, 1998, EPA also observes that, even under the most conservative interpretation, this would be the earliest date of expiration for the statute of limitations. The Respondent maintains that July 1, 1998 is the last date this action could be commenced. It is unnecessary to definitively resolve this issue here, as even assuming the correctness of Respondent's position, it is determined, as explained above, that this action was timely commenced.

In the Matter of AutoAlliance International, Inc., Respondent
Docket No. 5-EPCRA-98-023

CERTIFICATE OF SERVICE

I certify that the foregoing **Order On Motions**, dated May 13, 1999 was sent this day in the following manner to the addressees listed below:

Original by Regular Mail to: Sonja R. Brooks
Regional Hearing Clerk
U.S. EPA
77 West Jackson
Boulevard
Chicago, IL 60604-3590

Copy by Regular Mail to:

Attorney for Complainant: Alan Walts, Esquire
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Maria Whiting-Beale
Legal Staff Assistant

Dated: May 13, 1999