

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of

Coleman Trucking, Inc.,

Docket No. 5-CAA-96-005

Respondent

ORDER GRANTING IN PART COMPLAINANT'S MOTION TO PARTIALLY STRIKE RESPONDENT'S ANSWER

The U.S. Environmental Protection Agency ("EPA") has filed a motion to strike affirmative defenses 1, 2, 3, 5, 7, 10, and 11 raised by Coleman Trucking, Inc. ("Coleman") in its answer. Subsequent to EPA's motion to strike, Coleman filed an amended answer in which all of its affirmative defenses were supplemented, with the exception of Affirmative Defense No. 1. EPA's motion to strike is granted with respect to Affirmative Defense No. 10 only. In all other respects, the motion to strike is denied.

With regard to Affirmative Defense No. 10, Coleman argues that prosecution of the two alleged violations at issue in this case is barred by the statute of limitations. An order was issued this date rejecting an identical argument raised by respondent in its motion for judgment on the pleadings. Accordingly, for the reasons set forth in that order, EPA's motion to strike Affirmative Defense No. 10 is granted.

On the basis of respondent's amended answer, the motion to strike Affirmative Defenses 1, 2, 3, 5, 7, and 11 is denied. At this early stage of the proceeding, Coleman raises enough of a factual and legal question with respect to these affirmative defenses to sustain this preliminary challenge by EPA. See *Williams v. Jader Fuel Company, Inc.*, 944 F.2d 1388, 1400 (7th Cir. 1991)(motions to strike are not favored); see also, *U.S. v. Marisol, Inc.*, 725 F.Supp. 833 (M.D.Pa. 1989).

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 Granting in Part Complainant's Motion to Partially Strike Respondent's Answer, dated November 6, 1996, was sent this day in the following manner to the below addressees.

Original by Regular Mail to:

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Acting Regional Hearing Clerk
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Dated: November 7, 1996