



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
)
JULIE'S LIMOUSINE &) Docket No. CAA-04-2002-1508
COACHWORKS, INC.,)
)
RESPONDENT)

ORDER ON RESPONDENT'S MOTION TO DISMISS THE COMPLAINT
FOR LACK OF SUBJECT MATTER JURISDICTION

This civil administrative penalty proceeding arises under the authority of Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d). This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-22.32.

On June 28, 2002, the United States Environmental Protection Agency, Region IV (the "EPA" or "Complainant") filed a Complaint against Julie's Limousine & Coachworks, Inc. ("Respondent"), alleging violations of Sections 114, and 609(c), (d) of the CAA, 42 U.S.C. §§ 7414, and 7671h(c), (d), and the implementing regulations for the servicing of motor vehicle air conditioners found in 40 C.F.R. Part 82, Subpart B. Complainant seeks a civil administrative penalty of \$43,018.50 for the alleged violations. Respondent filed an Answer on July 25, 2002, denying or claiming to have insufficient knowledge of the allegations made by Complainant and contesting the EPA's jurisdiction over this matter.

After the parties engaged in a prehearing information exchange, an Order Scheduling Hearing was issued setting May 5, 2003 as the date for hearing. On April 9, 2003, Respondent filed a Motion to Dismiss the Complaint for Lack of Subject Matter

Jurisdiction ("Motion"),¹ arguing that the waiver submitted by the EPA to comply with Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1)², was ineffective because it was signed by a person who did not have the authority to grant a waiver. Specifically, Respondent alleges that a March 5, 2002 letter signed by Bruce Buckheit, Director of the Air Enforcement Division in the Office of Enforcement and Compliance Assurance, cannot serve as the Section 113(d)(1) waiver because Complainant has not demonstrated that Mr. Buckheit possessed authority to grant such a waiver.

Pursuant to Section 301(a) of the CAA, 42 U.S.C. 7601(a), "[t]he Administrator may delegate to any officer or employee of the Environmental Protection Agency such of his powers and duties under this chapter, except the making of regulations subject to section 7607(d) of this title, as he may deem necessary or expedient." In its Response to Respondent's Motion to Dismiss the Complaint for Lack of Subject Matter Jurisdiction ("Response"), Complainant provided documentation to show that the authority for enforcement actions under Section 113(d)(1) has been delegated to the Division Director level in the Office of Regulatory Enforcement, which includes the Director of the Air Enforcement Division. Response, Exhibits 1-2. Thus, I find that the EPA has shown that the Section 113(d)(1) waiver in the instant matter was issued by a person at the EPA who had authority to issue such waiver.³ Accordingly, Respondent's Motion to Dismiss is DENIED.

¹ An Order was entered on November 26, 2002, denying Respondent's Motion to Dismiss and Motion for Bill of Particulars.

² Section 113(d)(1) of the CAA states that the Administrator's authority to issue an administrative order under this paragraph "shall be limited to matters where the total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action." The first alleged date of violation in this matter occurred on January 1, 1997.

³ The Delegations Manual states that the Administrator has delegated authority to make waiver determinations to the Regional Administrators and the Assistant Administrator for Enforcement and Compliance Assurance. The Delegations Manual then provides that this authority may be redelegated to the Division Director level. See U.S. EPA, Delegations Manual § 7-6-A ¶¶ 2., 4. (1994).

Order

Respondent's Motion to Dismiss the Complaint for Lack of Subject Matter Jurisdiction is DENIED.

Barbara A. Gunning
Administrative Law Judge

Dated: April 23, 2003
Washington, DC