

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of

Frontier Stone, Inc.

CAA Docket No. II-95-0105

Respondent

ORDER SETTING PROCEDURAL OPTIONS

The Complainant in this proceeding filed a Motion for Partial Accelerated Decision dated January 15, 1997. It was not received in the undersigned's office until February 5, 1997.¹ Respondent filed its opposition to Complainant's motion, dated January 30, 1997. In its opposition, Respondent also sought dismissal of the Complaint. The Complainant filed a reply to Respondent's opposition on February 14, 1997, and Respondent filed a further reply on February 19, 1997. The hearing in this matter is scheduled to begin on March 4, 1997 in Niagara County, New York.

Ordinarily, I would deny the Complainant's motion for partial accelerated decision summarily as untimely, and direct that the hearing proceed as scheduled. As a general guideline, any substantive motion should be brought at least 45 days before a scheduled hearing. The response could then be filed about 30 days before the hearing. This may still not give the judge enough time, depending on his or her schedule. In this case, the responsive pleadings were filed well under 30 days before the date set for hearing. The Complaint in this case was filed in July 1995, and the hearing has been scheduled since November 21, 1996.

However, upon perusal of the motions and responses, this appears to be a case in which the essential facts concerning liability are not genuinely in dispute. The motions raise significant legal issues that, if first resolved, could be dispositive or at least narrow the issues for any hearing that might still be necessary. In these circumstances, despite the late filings, it may be most efficient to suspend any hearing until resolution of the parties' respective motions for accelerated decision. On the other hand, depending on the rulings, the resolution of this proceeding may ultimately be delayed.

Proceeding to hearing on March 4 would have the advantage of definitively closing the record on all potential issues shortly after that date. The legal issues raised in the parties' motions and responses would then be addressed along with other factual issues relating to liability or the appropriate penalty that arose at the hearing. In either case, I do not have time to rule on the pending motions before the scheduled hearing date.

Therefore, I will give the parties the option to jointly stipulate to suspend the hearing pending the resolution of the Complainant's motion for accelerated decision and Respondent's motion for dismissal. The hearing will proceed as scheduled if either party declines to agree to such a suspension.² If the hearing is suspended, it may of course be rescheduled depending on the rulings and orders on the parties' motions.

Order

The parties are directed to notify my office no later than the close of business on February 26, 1997, whether or not they agree to suspend the hearing scheduled for March 4, 1997, pending resolution of the motions for accelerated decision.

Andrew S. Pearlstein
Administrative Law Judge

Dated: February 20, 1997
Washington, D.C.

In the Matter of Frontier Stone, Inc., Respondent

CAA Docket No. II-95-0105

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Setting Procedural Options**, dated February 20, 1997, was sent this day in the following manner to the addressees listed below:

Original by Regular Mail to:

Karen Maples
Regional Hearing Clerk

U.S. EPA
290 Broadway, 17th Floor
New York, NY 10007-1866

Copy by Regular Mail to:

Attorney for Complainant:

Michael Arch, Esquire
Assistant Regional Counsel
U.S. EPA
290 Broadway, 16th Floor
New York, NY 10007-1866

Attomey for Respondent:

Kevin J. Brown, Esquire
Law Office of Kevin J. Brown 224 Harrison Street
Syracuse Building, Suite 312
Syracuse, NY 13202-3052

Maria Whiting
Legal Staff Assistant

Dated: February 20, 1997

¹ I only learned of the existence of Complainant's motion upon the receipt in my office of Respondent's opposition on February 4, 1997. My legal assistant then requested the Regional Hearing Clerk to fax us a copy, received on February 5, 1997. The certificate of service attached to Complainant's motion only indicates service on counsel for Respondent.

² As of today, I do not have a confirmed location for the hearing, although I heard it may be in the County Offices in Niagara Falls. If the hearing is to proceed, the parties will be notified of the exact location as soon as the arrangements are confirmed by the Regional Hearing Clerk, and of other procedural and housekeeping details for conducting the hearing.