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Slinger Drainage, Inc. v. EPA, 237 F.3d 681 (D.C. Cir. 2001)

Spencer L. Sears

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was “not determinative” of whether or not the section pertained to venue.

The court noted the CWA’s legislative history was unclear and not unequivocal as to whether section 509(b)(1) pertained to jurisdiction or venue. However, Industry petitioners did not raise this argument. The court concluded that even if they had, it would not have found such an argument persuasive.

The court held section 509(b)(1) determines venue, not jurisdiction. Because venue objections could be waived and Industry petitioners conceded proper venue was no longer an issue, the court denied Industry petitioners’ motion to dismiss.

Sarah E. McCutcheon

Slinger Drainage, Inc. v. EPA, 237 F.3d 681 (D.C. Cir. 2001) (holding the provision of the Clean Water Act that establishes the computation of time for filing a notice of appeal determines whether the notice is timely and not the federal rules of procedure).

Slinger Drainage (“Slinger”) installed drainage tiles over a fifty-acre area that resulted in the discharge of pollutants into a wetland. The Environmental Protection Agency (“EPA”) subsequently filed an administrative complaint against Slinger alleging a violation of section 301(a) of the Clean Water Act (“CWA”) for failure to obtain a permit before discharging pollutant into a wetland. The Administrative Law Judge found Slinger liable and imposed a civil penalty of \$90,000. The Appeals Board upheld the fine, and Slinger brought this action to the United States Court of Appeals for the District of Columbia.

The court ruled it had no jurisdiction to hear the case on its merits because Slinger failed to timely file the notice of appeal. Under the CWA, Slinger had thirty days to file its notice of appeal beginning on the date the Appeals Board issued its order. Slinger filed its notice a day late under the CWA provision. Slinger argued the Federal Rules of Appellate Procedure Rule 26(a) (“Rule 26(a)”) governed how courts should compute the thirty-day period, and not the CWA. Under Rule 26(a), the day the court issued its order is not calculated in the time period, and Slinger’s appeal would have been filed on time.

The court held Rule 26(a) did not apply when Congress has specified a particular method of counting in the statute itself and there is no indication of a contrary congressional intention. The court dismissed Slinger’s appeal because the CWA clearly established the computation of time.

Spencer L. Sears

United States v. A.J.S., Inc., No. CIV.A.00-0263-C, 2000 U.S. Dist. LEXIS 17388 (E.D. La. Nov. 29, 2000) (denying summary judgment motion concerning a mortgage foreclosure due to the existence of