

United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Filed April 13, 2001

No. 99-1433

Slinger Drainage, Inc.,  
Petitioner

v.

Environmental Protection Agency,  
Respondent

-----

Before: Edwards, Chief Judge; Williams, Ginsburg,  
Sentelle, Henderson, Randolph, Rogers, Tatel and Garland,  
Circuit Judges.

O R D E R

Upon consideration of petitioner's petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

A statement of Circuit Judge Williams dissenting from the denial of rehearing en banc is attached.

A separate Memorandum Opinion supporting the denial of rehearing is attached to the order denying the petition for panel rehearing.

Williams, Circuit Judge, dissenting: I am not persuaded by the court's view that Rule 26(a) of the Federal Rules of Appellate Procedure cannot be reconciled with 33 U.S.C. s 1319(g)(8). Rule 26(a) sets up a general rule on how to apply a provision that sets forth a "period" (i.e., time limit): Don't count the day "that begins the period." Then the substantive statute identifies a "period," 30 days, that "begins" on the date the civil penalty order is issued. One can put the two together by saying that the substantive statute identifies the "day that begins the period" as the issuance date; Rule 26(a) tells us to exclude that day. See also American Federation of Government Employees, AFL-CIO v. Federal Labor Relations Authority, 802 F.2d 47, 48 (2d Cir. 1986) ("The statute [5 U.S.C. s 7123(a)] declares that the 60-day period begins on the date the order is issued, but does

not direct that the date of issuance be counted as part of that period." ).