

**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:

Build-It Bros., L.L.C.

Docket No. TSCA-01-2019-0055

)
)
) TSCA Appeal No. 20-06
)
)
)

**ORDER ELECTING TO EXERCISE SUA SPONTE REVIEW AND ESTABLISHING
BRIEFING SCHEDULE**

The Regional Judicial Officer (“RJO”) for the U.S. Environmental Protection Agency, Region 1 (“Region”) issued an Initial Decision and Default Order (collectively, “Default Order”) in this matter on December 29, 2020. *See In re Build-It Bros., L.L.C.*, Dkt. No. TSCA-01-2019-0055 (RJO Dec. 29, 2020).¹ The Default Order found Build-It. Bros., L.L.C., (“Respondent”) in default for failing to file an answer to the Administrative Complaint (“Complaint”) filed by the Region for alleged violations of Section 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2689, and the regulations promulgated thereunder, set forth at 40 C.F.R. Part 745, Subpart E. *Id.* at 1-2. The Default Order found Respondent liable on all counts alleged in the

¹ On January 21, 2021, the Board ordered re-service of the Initial Decision and Default Order due to apparent anomalies in the certificate of service regarding the service date and whether Respondent was served by email. Order Directing Re-Service of Initial Decision and Default Order (Jan. 21, 2021). On January 25, 2021, the Regional Hearing Clerk re-served the Initial Decision and Default Order, certifying that a copy of the Initial Decision and Default Order was served on Respondent by “certified, Overnight Express, first class mail.” *See* Certificate of Service (Jan. 25, 2021) (certificate of service accompanying re-served default order).

Complaint and assessed a \$1,456 penalty. *Id.* at 2. Upon examination of the Motion for Default and Memorandum in Support of the Default Order (collectively, “Motion for Default”) and the RJO’s Default Order, the Environmental Appeals Board (“Board”) has decided to exercise sua sponte review. Accordingly, this order constitutes notice, required under 40 C.F.R. § 22.30(b), of the Board’s intent to review the Default Order.

At issue is whether Respondent was served with the Motion for Default and subsequent Default Order. Pursuant to the Consolidated Rules of Practice (“CROP”), under 40 C.F.R. part 22, a copy of each document filed by a party “shall be served on * * * each party.” 40 C.F.R. § 22.5(b).² In addition, the CROP requires that the Regional Hearing Clerk serve copies of rulings, orders, and decisions on all parties. 40 C.F.R. § 22.6.

The certificate of service accompanying the complaint in this matter certifies that the complaint was served on Respondent by “First Class Mail — Return Receipt Requested” at the following address: 38 Mussey Road, Scarborough, ME 04074. *See* Compl. (Sept. 30, 2019) (certificate of service appended to end of complaint). And the record in this matter includes the return receipt for the complaint. Motion for Default, ex. 2 (July 14, 2020). The certificate of service accompanying the Motion for Default, however, contains an apparent error. It certifies that the motion was served on Respondent by “First Class Mail — Return Receipt Requested” at the following address 38 Mussey Road, Scarborough, ME 04704—transposing two numbers in the zip code for Respondent’s address. And the Board has been unable to locate in the record for this matter a return receipt for the Motion for Default. Similarly, the address for Respondent on

² This rule also applies to service of motions. 40 C.F.R. § 22.16 (stating that “[m]otions shall be served as provided by § 22.5(b)(2).”).

the certificate of service accompanying the Default Order is 38 Mussey Road, Scarborough, ME 04704, again transposing two numbers in the zip code. *See* Certificate of Service (Jan. 25, 2021) (certificate of service accompanying re-served default order).

Because of the apparent error in the address listed for Respondent in the certificates of service, and further recognizing the apparent lack of the return receipt that was requested in connection with service of the Motion for Default, it is unclear whether Respondent was served with the Motion for Default or the subsequent Default Order. Accordingly, the Board has determined that additional briefing will assist its deliberation and establishes the following briefing schedule:

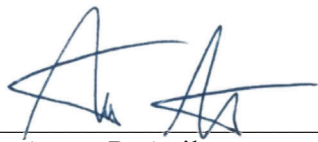
- (1) On or before February 18, 2021, the Region shall file with the Clerk of the Board and all parties its brief, including any supporting documentation, addressing whether service of the Motion for Default and the Default Order upon Respondent was adequate and met applicable regulatory requirements.
- (2) On or before February 25, 2021, Respondent shall file with the Clerk of the Board and serve on the Region its brief, if any, responding to the Region's brief addressing service.

So ordered.³

³ The three-member panel deciding this matter consists of Environmental Appeals Judges Aaron P. Avila, Mary Kay Lynch, and Kathie A. Stein.

ENVIRONMENTAL APPEALS BOARD

Dated: **Feb. 9, 2021**

By: 
Aaron P. Avila
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Electing to Exercise Sua Sponte Review and Establishing Briefing Schedule* in the matter of Build-It Bros., LLC, TSCA Appeal No. 20-06, were sent to the following persons in the manner indicated.


By Email:

David Magee
38 Mussey Road
Scarborough, ME 04074
dmagee@dr.com

Hugh Martinez
Senior Enforcement Counsel
U.S. EPA Region 1
5 Post Office Square, Suite 100
Mail Code: 04-3
Boston, MA 02109-3912
martinez.hugh@epa.gov

Regional Judicial and Presiding Officer LeAnn Jensen
Paralegal/Regional Hearing Clerk Wanda Santiago
5 Post Office Square, Suite 100
Mail Code: ORC 4-6
Boston, MA 02109-3912
Jensen.Leann@epa.gov
santiago.wanda@epa.gov
R1_Hearing_Clerk_Filings@epa.gov

Dated: Feb 09, 2021



Eurika Durr
Clerk of the Board