

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

**Libra Industries, Inc.  
Mentor, Ohio**

**Respondent.**

**Docket No. EPCRA-05-2008-0005**

**COMPLAINANT'S RESPONSE TO RESPONDENT'S MOTION  
TO FILE ANSWER INSTANTER**

Complainant, Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5, by and through her attorney, opposes Respondent's Motion to File Answer Instanter and respectfully requests that the Presiding Officer deny Respondent's Motion to File Answer Instanter and, instead, grant Complainant's Motion for Default Order, filed on July 7, 2008.

As noted in Complainant's Supplemental Motion for Default Order, under Section 22.15(a) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (Consolidated Rules), 40 C.F.R. § 22.15(a), Respondent was required to file its Answer to the Complaint in this matter by February 6, 2008. Respondent's first attempt to serve its Answer was out of time—not until February 8, 2008—and at that time, Respondent failed to file its Answer with the Regional Hearing Clerk, as required by 40 C.F.R. §§ 22.5(a) and 22.15(a).

In June 23, 2008, telephone conversation, Complainant notified Respondent that Respondent had not served its Answer on the Regional Hearing Clerk as required by the Consolidated Rules. Respondent acknowledged that it had failed to properly serve its Answer and verbally committed to filing its Answer by June 25, 2008. Respondent then again missed a

deadline and again failed to comply with the service requirements of the Consolidated Rules, to wit: Respondent did not attempt to serve its Answer until June 27, 2008, and this time failed to serve it on the Presiding Officer as required by 40 C.F.R. § 22.5(b). Respondent did not perfect service of process of its Answer until July 16, 2008, almost five and a half months after it was required to by the Consolidated Rules.

Furthermore, in Respondent's Motion to File Answer Instantly, Respondent misconstrues the computation of time standards set forth at 40 C.F.R. § 22.7(c) in asserting that its first, unsuccessful attempt to serve its Answer was not out of time.<sup>1</sup> 40 C.F.R. § 22.7(c) allows for five additional days to be added to the time allowed for filing responsive documents under the Consolidated Rules. This additional five-day provision only applies to documents that are served when they are "placed in the custody of a reliable commercial delivery service," such as motions and prehearing exchanges. This five-day extension does not apply to answers to complaints because service of a complaint is complete when the return receipt is signed, not when it is initially mailed, obviating the need for additional time for the document to be delivered. Respondent incorrectly calculated the due date and made its first attempt at filing its Answer out of time.

Finally, Respondent's insufficient certificates of service have caused confusion and resulted in much of the delay in this matter. In both Respondent's initial attempt to serve its Answer and its Motion to File Answer Instantly and Answer, the certificates of service attached to Complainant's copies have referred only to the document being served on Complainant; they have not identified any of the other entities being served. Because of the form of the certificate of service, Complainant assumed when it received Respondent's Answer in February 2008 that

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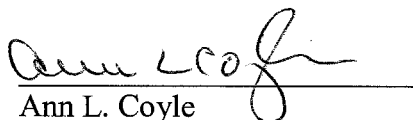
<sup>1</sup> Respondent references the requirements of 40 C.F.R. § 22.6(c). 40 C.F.R. § 22.6(c) does not exist; one can only presume Respondent intended to refer to 40 C.F.R. § 22.7(c), which provides for additional response time under certain circumstances.

Respondent had properly served its Answer on all the parties. Had the certificate of service attached to Respondent's Answer properly indicated all of the entities that received the Answer (demonstrating that the Regional Hearing Clerk had not), Complainant would have taken action on Respondent's untimely Answer far earlier. It was only as a result of Complainant's persistent questioning up that it became clear that Respondent had not properly served its Answer.

Throughout the pendency of this matter, Respondent has shown a blatant disregard for the Consolidated Rules and the administrative process. Respondent repeatedly has failed to comply with the timing and service of process requirements of the Consolidated Rules. Respondent's inattention to detail and the Consolidated Rules has led to extreme and unnecessary delay in this matter, all to Respondent's benefit.

WHEREFORE, Complainant, EPA, respectfully requests that the Presiding Officer deny Respondent's Motion to File Answer Instantly and instead enter a Default Order against Respondent, Libra Industries, Inc., finding the Respondent liable for the violations alleged in the Complaint and assessing the \$21,922 penalty as proposed in the Complaint.

Respectfully submitted this 21<sup>st</sup> day of July, 2008.



Ann L. Coyle  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard (C-14J)  
Chicago, Illinois 60604  
(312) 886-2248

**CERTIFICATE OF SERVICE**

I certify that on July 21<sup>st</sup>, 2008, I hand-delivered the original and one copy of

Complainant's Response to Respondent's Motion to File Answer Instantly to:

Regional Hearing Clerk (E-13J)  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

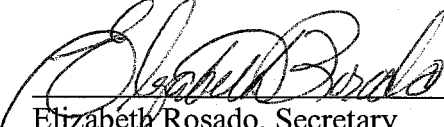
I further certify that on that date, I arranged for a copy of same to be sent via certified mail, return receipt requested, to the Respondent by placement of it in the custody of the United States Postal Service, addressed to:

Mr. Max Dehn  
Cavitch Familo Durkin & Frutkin  
1717 East Ninth Street, 14<sup>th</sup> Floor  
Cleveland, Ohio 44114

I further certify that I hand-delivered a file-stamped copy of same to:

Marcy Toney  
Regional Judicial Officer (C-14J)  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Dated: July 21<sup>st</sup>, 2008

  
Elizabeth Rosado, Secretary