

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF: :
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: :
Dimmid, Inc. :
: :
: :
Respondent :
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Docket No. TSCA-02-2023-9226

ORDER CLARIFYING STATUS AND ESTABLISHING DEADLINES

In order to clarify the status of this administrative litigation, the Undersigned summarizes the proceedings and communications to date as follows:

On March 21, 2023, Complainant EPA issued a Complaint (March Complaint) against Respondent, Dimmid, Inc. (Dimmid), which was served on Dimmid on March 22, 2003, and served on and stamped by the Regional Hearing Clerk (RHC), Karen Maples, on March 22nd.

On April 3, 2023, the Vice President of Dimmid, Leo Vernovsky, sent an email to the RHC which purported to be an answer, describing Mr. Vernovsky’s interpretation of events leading up to the issuance of the complaint and requesting that this matter be dismissed with prejudice. It also included information regarding settlement negotiations between EPA and Dimmid.

On April 20, 2023, the RHC returned Mr. Vernovsky’s April 3rd email to him, requesting clarification of the email, and providing him with an opportunity to submit an answer in compliance with the applicable regulations and the instructions beginning on page 14 of the March Complaint, in the section entitled “Procedures Governing This Administrative Litigation.”

On April 21, 2023, Mr. Vernovsky, copying Attorney for Complainant, Lee Spielmann, resubmitted his April 3rd email to Ms. Maples and indicated that this email was intended as an answer.

On April 21, 2023, Ms. Maples forwarded the file in this matter by email, including a copy of the March Complaint, to the Chief Administrative Law Judge, Susan Biro, requesting that an Administrative Law Judge (ALJ) be assigned to preside over this matter. She copied both Mr. Vernovsky and Mr. Spielmann on this email.

In an email on April 24, 2023, Mr. Spielmann forwarded an updated version of the complaint signed on April 12, 2023 (April Complaint) to Ms. Maples, asking that the April Complaint be sent to the Office of the Administrative Law Judge (OALJ) and be designated as the “complaint of record”.

On April 27, 2023, Mr. Spielmann sent an email to Ms. Maples, inquiring as to whether the April Complaint had been forwarded to the OALJ, and on April 28, 2023, Ms. Maples reiterated that the case had been forwarded to the OALJ.

By email dated April 28, Mr. Spielmann requested clarification as to which complaint was forwarded to the OALJ, and Ms. Maples responded by sending Mr. Spielman copies of the documents that were forwarded to the OALJ, including the March Complaint. In response, Mr. Spielmann reiterated by email on May 2nd that the April Complaint should be forwarded to the OALJ, but Ms. Maples responded, in two emails on May 3rd, that the case was no longer before Region 2 and any additional documents were to be filed with the OALJ Hearing Clerk, Mary Angeles.

By email on May 3, 2023, copying Respondent, Mr. Spielmann sent a copy of the April Complaint to Ms. Angeles, stating that it was the “complaint of record.”

On May 9, 2023, Ms. Angeles returned the matter to the Region for consideration by the Undersigned, stating the following grounds:

1. Confusion as to which complaint was the “complaint of record”;
2. Failure to comply with the requirement that the April Complaint, if intended as the “complaint of record,” bear the RHC’s stamp and include a certificate of service and proof of service.
3. The fact that the OALJ only has jurisdiction over this matter once an answer has been filed.
4. Respondent’s failure to file an answer in compliance with the regulations, pointing out that its purported answer failed to respond directly to the factual allegations in the complaint or request a hearing, and contained settlement information requiring redaction before that document could be uploaded to the tracking system and transmitted to the OALJ.

On May 30, 2023, Mr. Spielmann sent Ms. Angeles an email inquiring as to the pendency of this proceeding, summarizing recent correspondence, stating that the April Complaint had been sent to Ms. Angeles and Mr. Vernovsky, and asking whether Mr. Vernovsky’s April 3rd email, resubmitted April 21st, was accepted as an answer.

On May 31, 2023, Ms. Angeles responded that the matter had been returned to Region 2

by email dated on May 9th, for the reasons stated in that email and summarized above.

On May 31st, Mr. Spielmann sent an email to the Undersigned, requesting “clarification of the status of the pendency of this proceeding.”

The Undersigned cites the following regulations in issuing this Order:

Pursuant to 40 CFR § 22.14(c), Complainant may amend the complaint once as a matter of right before an answer is filed.

Pursuant to 40 CFR § 22.15 (a), and as addressed in the March Complaint, beginning on page 14, an answer to the complaint must be filed with the RHC within 30 days of the service of the complaint, and include the following:

The answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state: The circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which respondent disputes; the basis for opposing any proposed relief; and whether a hearing is requested.” 40 CFR § 22.15(b)

The Respondent may also make a motion pursuant to 40 CFR § 22.16(a) for an extension of time within which to answer the complaint and/or request an informal conference, as provided on page 17 of the March Complaint.

Based on the facts and regulations cited above, the Undersigned makes the following findings:

To date, Complainant’s efforts to file the April Complaint have been frustrated by confusion as to whether jurisdiction of this case resides with Region 2 or the OALJ and Complainant’s alleged failure to include a Certificate of Service with the April Complaint.

The Undersigned agrees with the OALJ that the document submitted by Respondent on April 3rd, and again on April 21st, did not constitute an answer in compliance with 40 CFR § 22.15(b).

As an answer has not been filed, Region 2 retains jurisdiction over this matter until such time as an answer has been filed in accordance with 40 CFR § 22.15. 40 CFR §§ 22.4(b) and 22.21 (a).

As an Answer has not been filed, EPA may file an amended complaint without leave of the Undersigned. 40 CFR § 22.14(c).

Based on the information contained herein, the Undersigned issues the following Order:

IT IS HEREBY ORDERED:

In order to have the April Complaint designated as the “complaint of record,” the Complainant shall serve and file the April Complaint in compliance with the regulations, with a courtesy copy to the Undersigned within seven (7) days after service of this Order.

The Respondent shall file an answer in compliance with the regulatory requirements or submit a motion to formally request an extension of time to answer within twenty (20) days after service of the April Complaint. 40 CFR §§ 22.14(c), 22.15 and 22.16 (a).

If Complainant fails to file the April Complaint as directed above, the Respondent shall file an answer to the March Complaint or a motion requesting an extension of time to answer within twenty (20) days after service of this Order.

If the Respondent fails to file an answer or request for extension in a timely manner, the Respondent may be found to be in default in accordance with the provisions of 40 CFR § 22.17.

Effective Date

The effective date of this Order shall be June 7, 2023.

The parties have ten (10) days from the date of service of this Order to contest, challenge or request further clarification of any information contained herein.

Date: June 7, 2023

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