

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)
)
Libra Industries, Inc.)
Mentor, Ohio)
)
)
Respondent.)
_____)

Docket No. EPCRA-05-2008-0005

RECEIVED
REGIONAL HEARING CLERK
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COMPLAINANT'S MOTION FOR DEFAULT ORDER

Complainant, Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5, by and through her attorney, respectfully moves that a Default Order be entered against Respondent pursuant to Section 22.17 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. § 22.17.

In support of this motion, EPA states:

1. Section 22.15 of the Consolidated Rules, 40 C.F.R. § 22.15, requires a Respondent to file its Answer to an Administrative Complaint with the Regional Hearing Clerk within 30 days after the date of service of the Administrative Complaint.
2. EPA filed with the Regional Hearing Clerk the original and one copy of the Administrative Complaint (Complaint) in this matter on January 3, 2008.
3. EPA served a copy of the signed original of the Complaint on Respondent, Libra Industries, Inc., by certified mail, return-receipt requested on January 3, 2008.
4. Respondent received the Complaint on January 7, 2008.
5. As of June 30, 2008, Respondent had not filed an Answer to the Complaint.
6. Respondent has failed to file an Answer to the Complaint as required by 40 C.F.R. § 22.15.

7. Section 22.17(a) of the Consolidated Rules, 40 C.F.R. § 22.17(a), states that a party may be found to be in default upon failure to timely file an Answer, and “[d]efault by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent’s right to contest such factual allegations.”


8. When a Presiding Officer determines that a default has occurred, she “shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued.” 40 C.F.R. § 22.17(c).

9. Respondent has filed no documents purporting to justify its failure to Answer, and therefore has failed to demonstrate good cause why a default order should not be issued.

10. A proposed Default Order accompanies this Motion.

WHEREFORE, Complainant, EPA, respectfully requests that the Presiding Officer 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 5th day of July, 2008.



Ann L. Coyle
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(312) 886-2248

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
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Libra Industries, Inc.)
Mentor, Ohio)
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Respondent.)
_____)

DOCKET NO. EPCRA-05-2008-0005

RECEIVED
MAY 13 2008
EPCRA
REGIONAL OFFICE
COLUMBUS, OHIO

**COMPLAINANT'S MEMORANDUM IN SUPPORT OF
MOTION FOR DEFAULT ORDER**

INTRODUCTION

Pursuant to Section 22.17 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. § 22.17, Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5, by and through her attorney, moves for a Default Order against the Respondent, Libra Industries, Inc. As set forth below, Respondent has failed to file an Answer to the Administrative Complaint (Complaint) in this matter as required by 40 C.F.R. § 22.15; therefore, default is appropriate under 40 C.F.R. § 22.17(a). Complainant requests that the Presiding Officer issue a Default Order finding the Respondent liable for the violations alleged in the Complaint and assessing the \$21,922 penalty as proposed in the Complaint.

BACKGROUND

The purpose of the Toxic Chemical Release Inventory (TRI) is to provide information to federal, state and local governments and the public, including citizens of communities surrounding covered facilities about releases of toxic chemicals to the environment. 42 U.S.C. § 11023(h). EPA promulgated the Toxic Chemical Release Reporting Community Right-to-

REDACTED

Know Rule at 40 C.F.R. Part 372 pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048.

Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 require the owner or operator of a facility subject to the requirements of Section 313 and Part 372 to complete and submit to the Administrator of EPA and to the state in which the facility is located, no later than July 1 of each calendar year, a chemical release form published pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), for each toxic chemical listed under Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), that was manufactured, processed, or otherwise used at the facility during the preceding calendar year in a quantity exceeding the threshold established by Section 313(f) of EPCRA, 42 U.S.C. § 11023(f). EPA published the Toxic Chemical Release Inventory Reporting Form, U.S. EPA Form 9350-1 (1-88) (Form R) at 40 C.F.R § 372.85 pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g).

Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that the requirements of Section 313 and Part 372 apply to any facility that has 10 or more full-time employees, falls within Standard Industrial Classification (SIC) codes 20 through 39 and manufactures, imports, processes, or otherwise uses a toxic chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 in an amount that exceeds the threshold for reporting, as set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and in 40 C.F.R. §§ 372.25, 372.27 and 372.28. All persons required to report pursuant to Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), must use Form R according to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a).

Respondent manufactures printed circuit boards at its facility (facility) located at 7770 Division Drive, Mentor, Ohio. Specifically, Respondent's facility populates circuit boards, an

operation that involves processing toxic chemicals, including lead. Respondent's manufacturing process falls under SIC Code 3672 (printed circuit board manufacturer). Respondent employs over 100 people. See Attachments 2 and 3.

Complainant began its investigation into this matter by conducting an inspection of facility on May 3, 2006. The purpose of the inspection was to document Respondent's reporting practices and to determine its compliance with the EPCRA regulations. During the inspection, Respondent provided records of its chemical usage for calendar year 2004, as well as inventory quantities for all chemicals used by the facility during calendar year 2004. See Attachment 2. EPA reviewed these records and determined that Respondent processed 641 pounds of lead, CAS No. 7439-92-1, during the 2004 calendar year. The reporting threshold for lead is 100 pounds. See 40 C.F.R. § 372.28(a)(1). Therefore, Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to EPA and the State of Ohio a Form R for lead for the 2004 calendar year on or before July 1, 2005.

On June 28, 2007, Respondent filed its Form R for lead for calendar year 2004 with EPA and Ohio, nearly two years past the deadline for a timely submission. Attachment 4. Respondent failed to submit timely to EPA and Ohio a Form R for lead for the 2004 calendar year and violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Based on this information, Complainant filed the Complaint on January 3, 2008. In the Complaint, Complainant seeks to assess an administrative penalty against Respondent for violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30. A copy of the Administrative Complaint is included as Attachment 5 to this memorandum.

EPA alleges one violation in the Complaint. Count I of the Complaint alleges that Respondent failed to timely report when its usage of the toxic chemical lead, CAS No. 7439-92-

1, as defined by 40 C.F.R. § 372.65, exceeded the reporting threshold for lead, as defined by 40 C.F.R. § 372.28(a)(1), through submission of a Form R to EPA and Ohio for the calendar year 2004. Based upon the facts of this case and according to the criteria provided in Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), Complainant proposed a penalty of \$21,922 for Count I in the Complaint.

Service of the Administrative Complaint was complete on January 7, 2008. A copy of the return receipt establishing the date of service is included as Attachment 6 to this Memorandum.

Pursuant to the Section 22.15 of the Consolidated Rules, 40 C.F.R. § 22.15, Respondent was required to file its Answer with the Regional Hearing Clerk within 30 days after the date of service. The Answer was due not later than February 6, 2008.

As of June 30, 2008, Respondent had not filed an Answer. An affidavit from the Regional Hearing Clerk, attesting to the absence of any Answer, is included as Attachment 7 to this Memorandum.

ARGUMENT

Respondent clearly has defaulted in this matter because Respondent has, with no justification, failed to file an Answer to the Complaint. Moreover, the Complaint and Inspection Report clearly establish the legal and factual bases for imposition of liability and the proposed penalty. See 40 C.F.R. § 22.17(b). Therefore, the Presiding Officer should issue an order finding the Respondent in default.

I. DEFAULT IS APPROPRIATE BECAUSE RESPONDENT FAILED TO FILE AN ANSWER

Under the Consolidated Rules, failure to timely file an Answer is grounds for default and “[d]efault by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent’s right to contest such factual allegations.” 40 C.F.R. § 22.17(a). As described above, the Answer in this matter was due not later than February 6, 2008. Now, five months later, Respondent still has failed to file an Answer.

When a Presiding Officer determines that a default has occurred, she “shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued.” 40 C.F.R. § 22.17(c). Since the filing of the Complaint, Respondent has filed nothing purporting to justify its failure to Answer. See Attachment 7. The record does not show good cause why a default order should not be issued and the Presiding Officer should, in accordance with 40 C.F.R. § 22.17(a), issue a default order under 40 C.F.R. § 22.17(c).

II. COMPLAINANT HAS ESTABLISHED A PRIMA FACIE LIABILITY CASE

40 C.F.R. § 22.17(b) provides that a movant seeking default in a penalty action must “state the legal and factual grounds for the relief requested.” The Complaint alleges one violation. The evidence for Respondent’s liability is contained in the Inspection Report, Dun and Bradstreet Report and TRI Database and is summarized below. Through the Complaint and this evidence, Plaintiff has satisfied its burden under 40 C.F.R. § 22.17(b).

Section 313 of EPCRA, 42 U.S.C. § 11023, and its implementing regulations require certain manufacturers, processors, and users of over 300 designated toxic chemicals to report

annually on emissions of those chemicals. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that the requirements of Section 313 and Part 372 apply to any facility that has 10 or more full-time employees, falls under SIC Codes 20 through 39, and manufactures, imports, processes, or otherwise uses a toxic chemical identified at Section 313(c), 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 in an amount that exceeds the threshold for reporting, as set forth in Section 313(f), 42 U.S.C. § 11023(f), and in 40 C.F.R. §§ 372.25, 372.27 and 372.28.

As noted above, Respondent has more than 100 employees. See Attachments 2 and 3. Respondent falls within a covered SIC Code (3672—printed circuit board manufacturer). Attachment 3. Respondent processed approximately 641 pounds of lead in calendar year 2004, Attachment 2, more than six times the reporting threshold for lead of 100 pounds. Accordingly, Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 required Respondent to complete and submit to EPA and Ohio, no later than July 1, 2005, a Form R for lead. Respondent submitted its Form R for lead for calendar year 2004 to EPA and Ohio on June 28, 2007. Therefore, Respondent failed to timely file its Form R for lead for calendar year 2004 and violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

III. THE PROPOSED PENALTY IS APPROPRIATE CONSIDERING THE FACTS IN THE CASE AND THE STATUTORY PENALTY FACTORS

Complainant calculated the civil penalty of \$21,922 based on the facts of this case and pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c). Complainant also considered EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)* (amended) (April 12, 2001) (*Penalty Policy*), a copy of which is attached as Attachment 8.

Respondent violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30, which require owners and operators of covered facilities to document evidence of releases of toxic chemicals in excess of specified threshold quantities and to report that information to EPA and the state in which the facility is located. Section 313 enables EPA, which is responsible for carrying out and enforcing the requirements of EPCRA, to meet a major goal of the statute: to make available to the public information about releases of toxic chemicals by facilities in their communities. By failing to meet this reporting requirement, Respondent undermined the purpose of EPCRA. Moreover, the reporting violation is very serious because it impedes the ability of EPA to carry out a major objective of EPCRA, which is to inform the public of releases of toxic chemicals resulting from operations of facilities in their local communities. Simply put, to effectuate the goal of EPCRA, consistent compliance with reporting requirements is essential. Therefore, one of the major goals of EPA's enforcement program is to ensure that facilities are deterred from committing EPCRA violations to maximize the efficacy of EPCRA.

Under the *Penalty Policy*, EPA uses a matrix to calculate the gravity of a violation and then adjusts that preliminary amount based on whether a Respondent voluntarily disclosed the violation, if the Respondent has a prior history of violations, or if EPA has delisted the chemical. In this case, EPA also considered Respondent's ability to pay the proposed penalty.

A. Nature, Circumstances, Extent and Gravity of Violations

To calculate the gravity component of the penalty, EPA considers the circumstances of the violation and the extent of the violation. The circumstances of the violation simply describe the violation. Under the *Penalty Policy*, failure to timely file a Form R is a Level 1 violation. Respondent failed to timely file its Form R for lead for calendar year 2004; therefore, it is a Level 1 violation. The extent level is based on the amount over the reporting threshold for a

chemical that a Respondent manufactures, processes or otherwise uses; total corporate entity sales; and the number of employees a Respondent has. Respondent processed 641 pounds of lead in calendar year 2004, more than six times the reporting threshold, had over \$21 million in corporate sales in 2004 and employs approximately 100 people. Attachment 2. Respondent's violation falls into the Level B extent category. The gravity-based penalty for a Level 1, Extent B violation that occurred on or after March 15, 2004, is \$21,922.

B. Voluntary Disclosure of Violation

Respondent did not voluntarily disclose this violation; EPA discovered it through a compliance inspection.

C. History of Violations

Respondent does not have a prior history of violations of EPCRA.

D. Delisting

EPA has not delisted lead.

E. Ability to Pay the Penalty

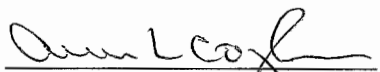
Respondent provided EPA with its 2005 and 2006 federal tax returns as well as limited income and balance sheet information. Attachment 9—**REDACTED**. During the inspection, Respondent stated that its revenue for the 2004 calendar year was \$21,343,000. Attachment 2. Based on its review of the financial information Respondent provided, EPA currently does not have any information that would indicate that Respondent an inability to pay the proposed penalty.

After reviewing Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), the *Penalty Policy* and the facts of this case, Complainant concluded that a proposed penalty of \$21,922 is appropriate.

CONCLUSION

For the reasons set forth above, Complainant moves this Court for a Default Order that includes the following: 1) finding all of the facts in the Complaint admitted; and 2) assessing a civil penalty in the amount of \$21,922 as pled in the Complaint and based on the admitted facts.

Respectfully Submitted,


Ann L. Coyle
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United States Environmental
Protection Agency
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(312) 886-2242

ATTACHMENTS

- Attachment 1: Proposed Default Order *In the Matter of: Libra Industries, Inc.*
- Attachment 2: EPA Inspection Report, Libra Industries, Inc., dated May 3, 2006
- Attachment 3: Dun & Bradstreet Report for Libra Industries, Inc.
- Attachment 4: TRI Query Results
- Attachment 5: Administrative Complaint *In the Matter of: Libra Industries, Inc.*
- Attachment 6: Copy of green card indicating date of service of Complaint on Libra Industries.
- Attachment 7: Affidavit of Regional Hearing Clerk
- Attachment 8: *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (amended April 12, 2001)*
- Attachment 9: **REDACTED**

CERTIFICATE OF SERVICE

I certify that on July 7, 2008, I hand-delivered two original copies of Complainant's Motion for Default, one redacted and one unredacted version of the Memorandum in Support of Motion for Default, to:

Regional Hearing Clerk
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

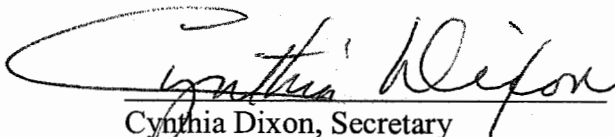
I further certify that on that date, I arranged for a copy of the Motion for Default with unredacted supporting documentation to be sent via certified mail, return receipt requested, to the Respondent by placement of it in the custody of the United States Postal Service, addressed to:

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

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

Marcy Toney
Regional Judicial Officer
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Dated: July 7, 2008


Cynthia Dixon, Secretary

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REGIONAL JUDICIAL OFFICER
MARCY TONEY