

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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In the Matter of:)
) Docket No. EPCRA-05-2011-0002
McQuay International)
Faribault, Minnesota,)
)
Respondent.)
_____)

ORDER SCHEDULING TELEPHONE CONFERENCE

The procedural history of this matter is as follows:

1. On October 27, 2010, Complainant, the Director of the Land and Chemicals Division, U.S. EPA Region 5, filed a Complaint against Respondent McQuay International of Faribault, Minnesota, alleging that Respondent violated the Emergency Planning and Community Right-to-Know Act of 1986.
2. The Complaint was served upon Respondent by certified mail, return receipt requested, on October 27, 2010.
3. No proof of service of the Complaint, either by affidavit of personal service or by properly executed receipt, has been filed with the Regional Hearing Clerk as required by 40 C.F.R. § 22.5(b)(1)(iii).
4. On December 1, 2010, counsel representing AAF-McQuay Inc. filed an appearance "on behalf of Respondent AAF-McQuay Inc." That document was not served on the Presiding Officer as required by 40 C.F.R. § 22.5(b) and was captioned "In the Matter of AAF-McQuay Inc."
5. On December 8, 2010, counsel for AAF-McQuay Inc. filed a Motion for Extension of Time to Answer seeking "an extension of fourteen days from entry of the Order in which to answer the Complaint." That document was not served on the Presiding Officer as required by 40 C.F.R. § 22.5(b) and was also captioned "In the Matter of AAF-McQuay Inc."
6. On December 17, 2010, the Presiding Officer was served with a Notice of Filing by counsel for AAF-McQuay Inc. which included the previously filed Motion for Extension of Time to Answer.

The record as it currently stands gives rise to several issues. First, it is unclear what date the Complaint was actually received by, *i.e.*, served upon, Respondent. Service of a complaint is complete when the return receipt is signed. 40 C.F.R. § 22.7(c). Because that is the date used to

calculate the due date for an answer (*see* 40 C.F.R. § 22.15(a)), it is not possible to determine what date Respondent's answer was actually due, or even if proper service has been effected. Second, it is unclear to the Presiding Officer what is the relationship, if any, between the two entities "McQuay International" (the party named as the Respondent in the Complaint) and "AAF-McQuay Inc." (the party whose name appears in the caption of all documents filed after the Complaint) and who is the actual Respondent in this matter.

In an effort to clarify these matters, the parties are hereby ORDERED to participate in a conference call with the Presiding Officer on **Tuesday, January 4, 2011, at 9:30 a.m. central time**. Counsel should dial in at 866-299-3188 and will be prompted for the conference code 312-886-6823. If counsel is unable to participate at this time due to a schedule conflict, they should contact my Administrative Assistant Mary Ortiz at (312) 353-8918.

Finally, the parties are reminded that this proceeding is governed by the Consolidated Rules of Practice (40 C.F.R. Part 22), adherence to which is fundamental to the orderly and efficient resolution of EPA's administrative enforcement matters.

SO ORDERED.

Dated: December 22, 2010



Marcy A. Toney
Regional Judicial Officer

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In the Matter of McQuay International
Docket No. EPCRA-05-2011-0002

CERTIFICATE OF SERVICE

I certify that the foregoing Order Scheduling Telephone Conference, dated December 22, 2010, was sent this day in the following manner:

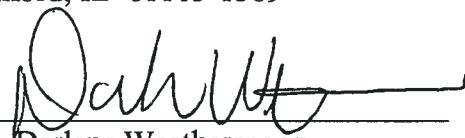
Original hand delivered to: Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Copy hand delivered to
Attorney for Complainant: Tamara Carnovsky
U. S. Environmental Protection
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Office of Regional Counsel
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Copy by U.S. Mail First Class to: Daniel W. McGrath
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Rockford, IL 61105-1389

Dated: 12/22/10

By: 
Darlene Weatherspoon
Administrative Program Assistant