

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

Received by
EPA Region 7
Hearing Clerk

IN THE MATTER OF)
)
The Askins Development)
Group, LLC,)
)
)
Respondent.)
_____)

Docket No. TSCA-07-2019-0280

ORDER TO RESPONDENT TO SHOW CAUSE

This proceeding was initiated on September 30, 2019, by Complainant, the Director of the Enforcement and Compliance Assurance Division of the U.S. Environmental Protection Agency, Region 7, filing a Complaint and Notice of Opportunity for Hearing (“Complaint”) against Respondent, the Askins Development Group, LLC, pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22. The Complaint advised Respondent that failure to respond within thirty (30) days could result in a finding of default and assessment of a civil penalty in the amount of \$42,003 against Respondent pursuant to section 16 of TSCA.

On February 18, 2021, Complainant filed a Motion for Default Order and supporting documentation. The basis for the Motion for Default is that Respondent failed to timely file an answer to the Complaint.

On March 3, 2021, Respondent filed a Motion for Extension of Time to Respond to Complainant’s Motion for Default Order. On March 8, 2021, I granted Respondent’s Motion for Extension of Time to Respond to Complainant’s Motion for Default Order and ordered that Respondent file its answer or otherwise respond on or before March 15, 2021. On March 15, 2021, Respondent filed Respondent [sic] Suggestions in Opposition to Complainant’s Motion for Default Order and Memorandum of Law in Support Thereof. On March 25, 2021, Complainant filed Complainant’s Reply in Support of Its Motion for Default Order.

On April 27, 2021, I held a conference call with the attorneys for the parties in this matter in which a variety of matters were discussed, including Respondent potentially claiming an inability to pay claim. Pursuant to my request during the April 27th conference call, on May 14, 2021, Complainant filed a Status Report detailing Complainant’s efforts to explain to Respondent the information needed to process Respondent’s ability to pay claim, including Respondent’s federal tax filings for the past three (3) years, including all schedules and attachments and a completed ability to pay (ATP) form which Complainant provided to Respondent. Complainant stated that on May 12, 2021, Respondent’s counsel provided what

appeared to be Respondent's federal tax filings for 2016, 2017, and 2018, together with other financial documentation and Complainant had begun to review the documents to determine if they are complete. The Status Report further stated that Respondent had yet to provide the completed ATP form.

On September 8, 2021, Complainant filed a Second Status Report. In the Second Status Report, Complainant stated that on May 19, 2021, Complainant provided Respondent's tax returns and other financial documentation to the EPA Region 7 finance department, which advised that the documents were insufficient to complete the ATP analysis. Complainant stated that on May 21, 2021, Complainant emailed Respondent's counsel, stating that the Agency had questions about Respondent's tax returns and the financial information provided. On June 21, 2021, Respondent's counsel emailed Complainant the ATP form, which was largely incomplete, or referred back to the financial information previously provided, about which the Agency had questions. On June 24, 2021, Complainant provided Respondent's ATP form to the EPA finance department, which advised that the ATP form was incomplete and that Respondent, despite stating in the ATP form that it had provided asset and liability information (balance sheet), instead had only provided purported income and expenses. Also on June 24, 2021, Complainant emailed Respondent's counsel again stating that the Agency had questions about Respondent's tax returns and the financial information provided. Respondent's counsel emailed Complainant stating he was out of town and asked Complainant to email the tax questions so they could be forwarded to Respondent's tax preparer. On June 25, 2021, Complainant emailed Respondent's counsel a series of preliminary questions related to Respondent's tax returns and the financial information provided. On July 13, 2021, Respondent's counsel emailed Complainant stating that, due to a private matter, he would be unable to address the questions contained in Complainant's June 25 email for at least a "week to two weeks." As of the date of Complainant's Second Status Report, Complainant states Respondent has yet to provide any substantive response to Complainant's preliminary questions about Respondent's tax returns or financial information, nor has Respondent provided a complete ATP form.

On October 19, 2021, I held a conference call with the attorneys for the parties to discuss the status of Respondent's ATP claim. I requested that the parties submit a joint status report by November 12, 2021. On November 12, 2021, Complainant and Respondent filed a Joint Status Report. In the Joint Status Report, the parties stated that following the conference call I held with the parties on October 19, 2021, the parties' attorneys spoke by telephone and Complainant's counsel agreed to send Respondent's counsel an email outlining the information needed by Complainant. On October 29, 2021, Complainant's counsel sent Respondent's counsel an email with an attachment containing a full list of EPA's initial questions, which included some questions that were originally sent by email to Respondent's counsel on June 25, 2021. On November 5, 2021, Respondent's counsel provided responses to four of EPA's initial questions, which the Agency is currently reviewing. Respondent's counsel further advised that he sent EPA's initial questions to Respondent. As of the date of the Joint Status Report, Respondent has not provided responses to the vast majority of EPA's questions, nor a date by which the answers will be provided to Complainant.

In order to move this matter forward, on November 16, 2021, I issued a Scheduling Order establishing deadlines for the parties to exchange information and documents. The Scheduling Order required Respondent to submit all documents, information and responses to Complainant, including complete responses to Complainant's questions set forth in the June 25, 2021, and

October 29, 2021, emails, in support of an ATP claim if Respondent intends to make such a claim for purposes of settlement. Additionally, I ordered the parties to confer and jointly file a status report by February 25, 2022.

On February 9, 2022, Respondent's counsel filed a Notice of Withdrawal of Attorney on Behalf of Respondent. On February 26, 2022, Complainant filed Complainant's Third Status Report. Complainant stated that as required by the scheduling order, it sent an email to Respondent's counsel identifying the documents, information, and questions/responses necessary for Complainant to conduct the ATP analysis, but as of the date of the Third Status Report, neither Respondent nor Respondent's counsel provided any response to Complainant's email. On February 18, 2022, Complainant sent a letter to Respondent at the address provided by Respondent's (withdrawn) counsel, to Respondent's registered agent as identified on the Missouri Secretary of State's website, and to an alternate address for Respondent which was also identified on the Missouri Secretary of State's website. The letter included a copy of the November 16, 2021, scheduling order and requested Respondent's or Respondent's legal representative to contact Complainant to confer and jointly file a status report by the deadline established in the scheduling order. As of the date of Complainant's Third Status Report, neither Respondent nor any legal representative of Respondent contacted Complainant and, as a result, Complainant filed the Third Status Report unilaterally. Complainant further stated that without further information regarding Respondent's financial condition, Complainant remains unable to properly evaluate Respondent's ability to pay the penalty sought. To date, Respondent has not complied with the November 16, 2021, Scheduling Order.

This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice"), set forth at 40 C.F.R. Part 22. Under the Rules of Practice, a party may be found to be in default upon failure to file a timely answer to the complaint or comply with an order of the Presiding Officer. 40 C.F.R. § 22.17(a). The Rules of Practice further provide that "[d]efault by respondent constitutes . . . an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegation." *Id.* Therefore, Respondent is hereby **ORDERED** to file a document/response on or before **May 31, 2022**, explaining why it had **good cause** for failing to file a timely answer to the Complaint and comply with the Scheduling Order dated November 16, 2021, and why a default order should not be entered against it. The response must be addressed/emailed to:

Amy Gonzales
Regional Hearing Clerk, Region 7
U.S. Environmental Protection Agency
11201 Renner Boulevard
Lenexa, KS 66219
Email: gonzales.amy@epa.gov

SO ORDERED.

Karina Borromeo
Regional Judicial Officer/Presiding Officer