



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Robert Lauter d/b/a Prime Cut Paint,) Docket No. TSCA-03-2023-0034
)
Respondent.)

ORDER TO RESPONDENT TO SHOW CAUSE

This proceeding was initiated on December 7, 2022, when Complainant, the Director of the Enforcement and Compliance Assurance Division of the U.S. Environmental Protection Agency, Region 3, filed an Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) against Respondent Robert Lauter d/b/a Prime Cut Paint for alleged violations of Section 409 of the Toxic Substances Control Act, 15 U.S.C. § 2689. Appearing *pro se*, Respondent subsequently filed a document, entitled “Response to Administrative Complaint,” with the Regional Hearing Clerk of Region 3. Treating the document as an answer, the Regional Hearing Clerk then forwarded the matter to this Tribunal for adjudication.

Upon being designated to preside, I issued two orders: an Order to Respondent to File Answer and a Prehearing Order. In the former, I advised Respondent that his “Response to Administrative Complaint” failed to comply with the procedural rules governing this proceeding¹ inasmuch as he did not clearly admit, deny, deny for lack of knowledge, or otherwise explain each paragraph of the Complaint that alleges a fact or facts. I also noted that Respondent did not request a hearing. Accordingly, I ordered Respondent to file and serve, no later than February 10, 2023, an answer that complies with the Rules and that states whether he desires a hearing upon the issues. In turn, in the Prehearing Order, I established deadlines for a number of prehearing procedures. Of particular relevance here, I directed that the parties engage in a settlement conference on or before February 10, 2023, and that Complainant file a Status Report regarding the conference and status of settlement on or before February 17, 2023.

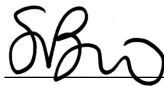
To date, Respondent has not complied with the Order to Respondent to File Answer, requested an extension of the deadline to comply, or otherwise communicated with this Tribunal. Conversely, Complainant timely filed a Status Report on February 15, 2023, in which Complainant describes its attempts since issuance of the Prehearing Order to engage in settlement discussions with Respondent. Complainant relates that in addition to rebuffing those efforts, Respondent also stated on occasions prior to issuance of the Prehearing Order that he will

¹ Styled as the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Rules of Practice” or “Rules”), the applicable procedural rules are set forth at 40 C.F.R. §§ 22.1 to 22.45.

not engage in settlement discussions and “intends to file suit against EPA in the U.S. Federal District Court system rather than proceed through the administrative process.” Status Report (Feb. 15, 2023), at physical page 1.

The Rules of Practice provide that a party may be found to be in default upon failure to comply with an order of the presiding Administrative Law Judge and that “[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). The Rules of Practice further provide that when default is found to have occurred, the presiding Administrative Law Judge “shall issue a default order against the defaulting party . . . unless the record shows good cause why a default order should not be issued.” 40 C.F.R. § 22.17(c). Accordingly, Respondent is **ORDERED** to file and serve a document, on or before **March 17, 2023**, showing cause as to why he failed to file an answer as directed by the Order to Respondent to File Answer and engage in a settlement conference with Complainant as directed by the Prehearing Order, and why a default order should not be entered against him.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

Dated: February 23, 2023
Washington, D.C.

In the Matter of *Robert Lauter d/b/a Prime Cut Paint*, Respondent.
Docket No. TSCA-03-2023-0034

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order to Respondent to Show Cause**, dated February 23, 2023, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.



Mary Angeles
Paralegal Specialist

Original by OALJ E-Filing System to:
U.S. Environmental Protection Agency
Office of Administrative Law Judges
https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf

Copy by Electronic Mail to:
Patrick J. Foley
Conner Kingsley
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 3
Email: foley.patrick.j@epa.gov
Counsel for Complainant

Copy by Electronic, Regular, and Certified Mail to:
Robert Lauter
Prime Cut Paint
1414 Baychester Avenue
Norfolk, VA 23503
Email: primecutpaint@gmail.com
Certified Return Receipt No.: 7019-1120-0001-6564-0537
Respondent

Dated: February 23, 2023
Washington, D.C.

**OFFICE OF ADMINISTRATIVE LAW JUDGES
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

WASHINGTON, D.C.

GUIDANCE ON USE OF OALJ E-FILING SYSTEM

The Office of Administrative Law Judges (“OALJ”) utilizes a web-based tool known as the OALJ E-Filing System to allow registered users to file documents electronically. Sending a document to oaljfilings@epa.gov or an email address of a staff member within the OALJ is not a valid method of electronic filing, unless otherwise specified in writing by the presiding Administrative Law Judge. The OALJ E-Filing System is accessible at www.epa.gov/alj. Documents filed electronically are deemed to constitute both the original and one copy of the document, and are deemed to have been both filed with the Headquarters Hearing Clerk and served electronically on the presiding Administrative Law Judge.

Any party choosing to file electronically must first register with the OALJ E-Filing System at https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf. Registration is not automated. There may be a delay of one to two business days between the time a party applies for registration and the time at which the party is able to upload documents into the system. Parties are advised to plan accordingly.

To be considered timely, documents submitted through the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the day the document is required to be filed, unless another time is specified by the presiding Administrative Law Judge. Immediately upon reception by the OALJ E-Filing System, the document will be marked with the official filing date and time. The OALJ E-Filing system will then generate an electronic receipt of the submission that will be sent by email to both the party submitting the document and the Headquarters Hearing Clerk. There may be a delay of approximately one hour between submission of the document and transmission of the electronic receipt.

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes. Electronically filed textual documents must be in Portable Document Format (“PDF”).

A motion and any associated brief may be filed together through the OALJ E-Filing System. However, any documents filed in support of a brief, motion, or other filing, such as copies of proposed exhibits submitted as part of a party’s prehearing exchange of information, should be submitted separately as an attachment. Where a party wishes to file multiple documents in support of a brief, motion, or other filing, rather than filing a separate attachment for each such document, the documents should be compiled into a single electronic file and filed as a single attachment, to the extent technically practicable, with each document appropriately bookmarked within the file. For example, where a party is filing copies of 12 proposed exhibits as part of its prehearing exchange, those 12 proposed exhibits should be submitted together as

one attachment consisting of a single electronic file, to the extent technically practicable, with each of the 12 exhibits bookmarked within the file.

The OALJ E-Filing System is not equipped either to accommodate or to protect the privacy of confidential business information (“CBI”) or sensitive personally identifiable information (“PII”) that could be used to identify or trace an individual, such as Social Security numbers, medical records, or personal financial information. If a party wishes to electronically file a document containing such information, the party shall redact (i.e., remove or obscure) that information from the document before filing the redacted version of the document through the OALJ E-Filing System. If the party wishes for the presiding Administrative Law Judge to consider the CBI or PII contained in the document, the party shall also file a paper copy of the unredacted version of the document by means other than the OALJ E-Filing System, in accordance with the procedures specified on the OALJ’s website at www.epa.gov/alj. To the extent that any person files any un-redacted CBI or PII through the OALJ E-Filing System, that person thereby waives any claims to confidentiality and consents to public disclosure of all such information.