



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)
)
Detroit Renovations, LLC, and) **Docket No. TSCA-HQ-2018-5006**
Nicole Curtis)
)
Respondents.)

ORDER ON RESPONDENTS’ MOTION FOR EXTENSION OF TIME

On August 1, 2018, the Director of the Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, of the U.S. Environmental Protection Agency (“Complainant”) commenced a civil administrative proceeding against Nicole Curtis and Detroit Renovations, LLC (“Respondents”) with the filing of a Civil Complaint and Notice of Opportunity for Hearing (“Complaint”) pursuant to Sections 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 (“Rules”), 40 C.F.R. Part 22.

On August 17, 2018, Complainant filed a Proof of Service with attachments thereto. Attachment A shows that the Complaint was sent by United Parcel Service to Nicole Curtis, Registered Agent, Detroit Renovations, LLC, Suite 900, 1350 Lagoon Avenue, Minneapolis, Minnesota 55408-2692. This address is on file with the Minnesota Secretary of State as the “Principal Executive Office Address” and the “Registered Office Address” for Detroit Renovations, LLC, and its registered agent, Nicole Curtis. Attach. B. The same address is also on file with the Minnesota Department of Commerce’s Real Estate Board as Nicole Curtis’s business address. Attach. C. The Complaint was received by Alexa Bobyak, a secretarial employee, at the 1350 Lagoon Avenue address on August 2, 2018. Proof of Service at 1; Attach. A.

In the Complaint, the Agency warned the Respondents that if they “fail to file a written Answer within (30) days of service of the Complaint, such failure shall constitute an admission of all facts in the Complaint and . . . may result in Complainant’s filing of a Motion for Default Order imposing the penalties . . . without further proceedings.” Compl. at 28; see also 40 C.F.R. § 22.17(a) (“A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint.”). Because the Agency used a commercial delivery service to serve the Complaint, Respondents had three additional days to file an answer, which was due on or before September 4, 2018. 40 C.F.R. §§ 22.7(b), 22.15(a). Respondents have not filed an answer to the Complaint and Complainant has not filed a motion for a default order.

On October 13, 2018, Respondents submitted the attached Motion for Extension of Time (“Motion”), dated October 4, 2018. A certificate of service did not accompany the Motion and it

is therefore unclear whether the Complainant had been served with a copy of the Motion.¹ In the Motion, Respondents request a 60-day extension of time, until December 3, 2018, to file an answer to the Complaint. Grounds for the Motion are that “the principle respondent was not privy to the [Complaint] until much later” than August 2, 2018. Respondents state in the Motion that Complainant does not oppose the Motion.

The Rules provide that “[a] party’s response to any written motion must be filed within 15 days after service of such motion.” 40 C.F.R. § 22.16(b). On October 29, 2018, my staff attorney contacted counsel for the Agency to ascertain whether Complainant opposed the Motion, because Complainant had not filed a response or otherwise joined in the Motion. Agency counsel stated in an email to my staff attorney that the Agency does not oppose the Motion.

Rule 22.7(b) provides that “the Presiding Officer may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative.” 40 C.F.R. § 22.7(b). Any such motion “shall be filed sufficiently in advance of the due date so as to allow other parties reasonable opportunity to respond and to allow the Presiding Officer . . . reasonable opportunity to issue an order.” 40 C.F.R. § 22.7(b). Rule 22.5(a)(1) provides that the original of all documents intended to be part of the record of this proceeding shall be filed with the Headquarters Hearing Clerk and a copy of such documents shall be served on all other parties and the Presiding Officer. 40 C.F.R. § 22.5(a)(1) (emphasis added). In addition, 40 C.F.R. § 22.5(a)(3) requires a “certificate of service,” evidencing such service, be attached to each document filed in the proceeding. The Presiding Officer may exclude from the record any document that does not comply with the filing requirements. 40 C.F.R. § 22.5(c)(5).

Here, the Respondents’ Motion is not timely and they have not filed a motion for leave to file the Motion out of time. Moreover, the Motion was not submitted in compliance with the filing requirements because it was not accompanied by a certificate of service. Therefore, the Motion may be excluded from the record in this proceeding and disregarded. 40 C.F.R. § 22.5(c)(5). Respondents have technically admitted to every factual allegation in the Complaint and are subject to the entry of a default order and the assessment of a civil penalty against them. 40 C.F.R. §§ 22.15(d), 22.17(a). However, because the Agency consents to the extension of time and has not yet filed a motion for a default order, I find that granting the Motion will not prejudice Complainant. Consequently, Respondents’ Motion for Extension of Time is hereby **GRANTED**.

Respondents are **ORDERED** to file their Answer to the Complaint on or before December 3, 2018.

¹ On October 15, 2018, my staff attorney attached the Motion to an email addressed to Respondents at detroitdesign@yahoo.com, the email address they provided to register for electronic filing, and Agency counsel. The email informed Respondents that the belatedly submitted Motion must be accompanied by a certificate of service and a motion for leave to file the request out of time because it was submitted after the deadline for filing an answer. To date Respondents have not submitted a certificate of service or a motion for leave to file out of time.

RESPONDENT'S ARE WARNED THAT FAILURE TO TIMELY FILE AN ANSWER
MAY RESULT IN THE ENTRY OF DEFAULT ORDER AGAINST THEM AND THE
ASSESSMENT OF A CIVIL PENALTY WITHOUT FURTHER PROCEEDINGS.



Susan L. Biro
Chief Administrative Law Judge

Dated: October 31, 2018
Washington, D.C.

In the Matter of *Detroit Renovations, LLC, and Nicole Curtis* Respondents.
Docket No. TSCA-HQ-2018-5006

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order on Respondent's Motion for Extension of Time**, dated October 31, 2018, 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 and One Copy by Personal Delivery to:

Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004

Copy by Electronic and Regular Mail to:

Amos Presler, Attorney Advisor
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. (Mail Code 2249A)
Email: presler.amos@epa.gov
For Complainant

Raymond C. Bosch, Attorney Advisor
United States Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Email: bosch.raymond@epa.gov
For Complainant

Copy by Regular Mail to:

Nicole Curtis
12409 Laurel Terrace Dr.
Studio City, CA 91604

Nicole Curtis, Registered Agent
Detroit Renovations, LLC
1350 Lagoon Avenue, Suite 900
Minneapolis, MN 55408

For Respondents

Dated: October 31, 2018
Washington, D.C.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

In the Matter of:

**Detroit Renovations, LLC, and
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Docket No. TSCA-HQ-2018-5006

Respondents.

MOTION FOR EXTENSION OF TIME

Comes now Respondent *Nicole Curtis and Detroit Renovations, LLC*, pursuant to Section 22.7(b) of the Rules of Practice, 40 C.F.R. ' 22.7(b), and respectfully requests a **60-day** extension of time to file its response/answer to the complaint filed on 1 August 2018 and as good cause therefore states as follows:

1. The response in this matter was to be filed by 2 September 2018. For the forgoing reasons, the parties petition the respective court for an extension of time;
2. Although, according to the Environmental Protection Agency (EPA), the office of the undersigned was served on 2 August 2018, the principle respondent was not privy to the documents until much later;
3. With this having been noted, *Nicole Curtis and Detroit Renovations, LLC*, humbly requests that the court consider an extension until 3 December 2019 to all terms related to the response and all other procedural matters.

WHEREFORE, above premises considered, it is humbly requested unto the administrative office of the EPA that the undersigned would be given another (60) days from receipt of this motion to file its response.

Prior to filing this Motion, the undersigned contacted the opposing party as to the extension requested herein and said opponent indicated that it does not oppose the Motion.

Signature of Respondent

10/4/18

Date