

**ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)	
)	
Build-It Bros., L.L.C.)	TSCA Appeal No. 20-(06)
)	
Docket No. TSCA-01-2019-0055)	
)	
)	

ORDER DIRECTING RE-SERVICE OF INITIAL DECISION AND DEFAULT ORDER

The Regional Judicial Officer for U.S. Environmental Protection Agency, Region 1 issued an Initial Decision and Default Order in this matter on December 29, 2020. *See In re Build-It Bros., L.L.C.*, Dkt. No. TSCA-01-2019-0055 (RJO Dec. 29, 2020). The Default Order assesses a penalty of \$1,456.00 against Respondent Build-It. Bros., L.L.C., for alleged violations of the Toxic Substances Control Act. *Id.* at 1-2. Any party may file an appeal of the Initial Decision and Default Order within 30 days after it is served and the Environmental Appeals Board (“Board”) has 45 days after service to elect to exercise its authority to review the Initial Decision and Default Order on the Board’s own initiative (often referred to as the Board’s authority to conduct *sua sponte* review). 40 C.F.R. § 22.30(a)(1)(i), (b).

The Certificate of Service accompanying the Initial Decision and Default Order “certif[ies]” that a copy of the Initial Decision and Default Order was e-mailed to Counsel for Complainant and Counsel for Respondent on December 29, 2020. The Certificate of Service was digitally signed by the Regional Hearing Clerk. There are two aspects of the Certificate of Service that create potential ambiguity as to service of the Initial Decision and Default Order as well as the deadlines for any party to appeal and for the Board to exercise its authority to review.

First, although the Certificate of Service recites that the Initial Decision and Default Order was emailed to Counsel, the Certificate of Service includes no email address for either counsel. The Certificate of Service includes only mailing addresses at physical locations for Counsel; no email addresses are included. That creates potential ambiguity as to the manner of service. Was the Initial Decision and Default Order in fact emailed or was it instead sent by mail? And if the Initial Decision and Default Order was emailed, to what email addresses? The manner of service matters, as the Consolidated Rules of Practice that govern here, 40 C.F.R. part 22, establish different methods for computing various deadlines based on the method of service. *See* 40 C.F.R. § 22.7(c).

Second, the text of the Certificate of Service states “I certify that on this 29th day of December 2020” a copy of the Initial Decision and Default Order was emailed to Counsel and is digitally signed by the Regional Hearing Clerk. But the Regional Hearing Clerk’s digital signature is dated December 31, 2020. That creates potential ambiguity as to whether the Regional Hearing Clerk served the Initial Decision and Default Order on the date “certif[ied]” (December 29, 2020) or instead on the date the Regional Hearing Clerk signed the Certificate of Service (December 31, 2020). The date of service matters because the time for any party to file an appeal and the time for the Board to elect to conduct *sua sponte* review runs from the date of *service* of the Initial Decision and Default Order on the parties.

Thus, the Certificate of Service for the Initial Decision and Default Order creates potential ambiguity in the record and creates unnecessary confusion as to applicable deadlines.

The Board therefore **ORDERS** the Regional Hearing Clerk to re-serve the Initial Decision and Default Order in this matter. The accompanying certificate of service should reflect the method of service for each party and include the relevant information for perfecting

that method of service. The certificate of service should also be signed by the Regional Hearing Clerk on the day of service. The Regional Hearing Clerk shall provide the Clerk of the Board a copy of the re-served Initial Decision and Default Order and accompanying certificate of service on or before **January 28, 2021**.

So ordered.

Dated: **Jan. 21, 2021**

ENVIRONMENTAL APPEALS BOARD

By: _____



Aaron P. Avila
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Directing Re-Service of Initial Decision and Default Order* in the matter of Build-It Bros., LLC, TSCA Appeal No. 20-(06), were sent to the following persons in the manner indicated.


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Dated: Jan 21, 2021



Eurika Durr
Clerk of the Board