

CAVITCH

FAMILO DURKIN & FRUTKIN
Legal Professional Association

Max E. Dehn
Attorney at Law
mdehn@cfd.com

Fourteenth Floor
1717 East Ninth Street
Cleveland, OH 44114-2876
T 216.621.7860
F 216.621.3415
www.cfd.com

July 16, 2008

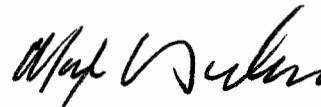
Ms. Sonja Brooks – Woodard
Regional Hearing Clerk (E-13J)
U.S. EPA , Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3511

RE: Docket No. EPCRA-05-2008-0005

Dear Ms. Woodard:

The enclosed Respondent's Motion to File Answer Instanter, and Answer in the above-captioned matter was filed on July 1, 2008. This copy is being provided with a second Certificate of Service, indicating service upon the Presiding Officer, Ms. Marcy A. Toney.

Very truly yours,



Max E. Dehn

Enclosure

RECEIVED
REGIONAL CLERK
2008 JUL 17 PM 5:37

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. EPCRA-05-2008-0005
)
LIBRA INDUSTRIES, INC.) MOTION TO FILE ANSWER
MENTOR, OHIO,) INSTANTER
)
Respondent)

Libra Industries, Inc. ("Libra") requests that it be permitted to file its Answer in this matter. Libra attempted to file its Answer on February 8, 2008, but the filing was inadvertently delivered to Judicial Officer Marcy Toney, whereas the proper recipient was Regional Hearing Clerk Sonja Brooks – Woodard.¹

Under 40 C.F.R. §§ 22.6(c), and 22.15(a), the Answer was due on February 11, 2008. On February 8, 2008, the Answer was sent via Federal Express to Ms. Toney, and was also sent to Ms. Ann Coyle, Associate Regional Counsel, U.S. EPA, Region 5. On February 11, 2008 the Answer was delivered to Ms. Toney. On or around the same date, the Answer was served upon Ms. Coyle.

Granting this Motion will neither unfairly advantage Libra, nor burden any party. Further, the Motion is not submitted for the purposes of delay. Therefore, Libra respectfully requests that it be permitted to file the attached Answer to the Complaint in this matter.

¹ See Federal Express shipping label, attached hereto as Exhibit 1.

Respectfully submitted,

CAVITCH, FAMILO, DURKIN & FRUTKIN CO., L.P.A.

By:


Harold O. Maxfield, Jr. (#36858)

Max E. Dehn (#007600)

1717 East Ninth Street, 14th Floor

Cleveland, Ohio 44114

Telephone: (216) 621-7860

Fax: (216) 621-3415

Email: mdehn@cfd.com

hmaxfield@cfd.com

Attorneys for Libra Industries, Inc.

From: Origin ID: BKLA (216)621-7860
Cyndee Richards
Cavitch, Familo, Durkin & Frut
1717 E. 9th St
14th Floor
Cleveland, OH 44114



CLS 02/12/2004

Ship Date: 08FEB08
Act/Wgt: 1 LB
System#: 9574067/INET8011
Account#: S *****

Delivery Address Bar Code



Ref # LIB777-00000 ✓
Invoice #
PO #
Dept #

SHIP TO: 3128863186 BILL SENDER

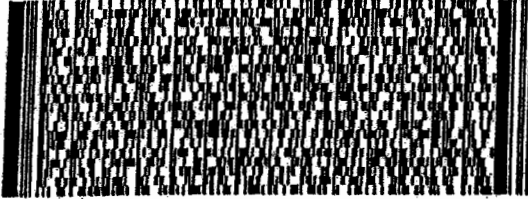
Marcy Toney
U.S. EPA, Region 5
77 W JACKSON BLVD

CHICAGO, IL 606043511

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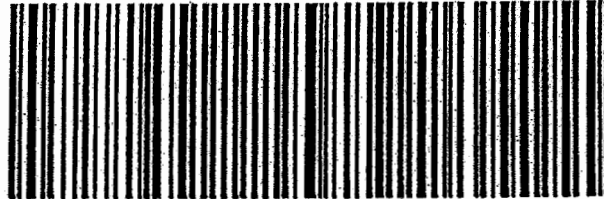


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EXHIBIT 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

LIBRA INDUSTRIES, INC.
MENTOR, OHIO,

Respondent

) Docket No. EPCRA-05-2008-0005

)

) ANSWER

)

)

)



REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL

The Respondent, Libra Industries, Inc. ("Libra"), answers the Complaint as

A handwritten signature in black ink, appearing to be "JBLW".

follows:

Complaint

1. Libra admits the allegations contained in Paragraph 1 of the Complaint.
2. Libra admits the allegations contained in Paragraph 2 of the Complaint.
3. Libra admits the allegations contained in Paragraph 3 of the Complaint.

Statutory and Regulatory Background

4. Libra is without sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 4 of the Complaint and therefore denies the same.
5. Libra is without sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 5 of the Complaint and therefore denies the same.
6. Libra is without sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 6 of the Complaint and therefore denies the same.
7. Libra is without sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 7 of the Complaint and therefore denies

the same.

8. Libra is without sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 8 of the Complaint and therefore denies the same.

9. Libra is without sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 9 of the Complaint and therefore denies the same.

10. Libra is without sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 10 of the Complaint and therefore denies the same.

General Allegations

11. Libra admits the allegations contained in Paragraph 11 of the Complaint.

12. Libra admits the allegations contained in Paragraph 12 of the Complaint.

13. Libra admits the allegations contained in Paragraph 13 of the Complaint.

14. Libra admits the allegations contained in Paragraph 14 of the Complaint.

15. Libra admits the allegations contained in Paragraph 15 of the Complaint.

16. Libra admits the allegations contained in Paragraph 16 of the Complaint.

17. Libra admits the allegations contained in Paragraph 17 of the Complaint.

18. Libra admits the allegations contained in Paragraph 18 of the Complaint.

Count I

19. In response to Paragraph 19 of the Complaint, Libra repeats all of the preceding responses contained in this Answer as if fully rewritten herein. Any allegations not specifically admitted are denied.

20. Libra admits the allegations contained in Paragraph 20 of the Complaint.
21. Libra admits the allegations contained in Paragraph 21 of the Complaint.
22. Libra admits the allegations contained in Paragraph 22 of the Complaint.
23. Libra admits the allegations contained in Paragraph 23 of the Complaint.
24. Libra admits the allegations contained in Paragraph 24 of the Complaint.
25. Libra admits the allegations contained in Paragraph 25 of the Complaint.
26. Libra admits the allegations contained in Paragraph 26 of the Complaint.
27. Libra admits the allegations contained in Paragraph 27 of the Complaint.

Proposed Penalty

Libra objects to the Proposed Civil Penalty as follows:

1. The Total Proposed Civil Penalty of \$21,922 is excessive under the Penalty Matrix set forth at page 11-A of the Enforcement Response Policy for Section 313 of the Emergency Planning Community Right-To-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) ("the Policy"). Although the factors identified appear to identify the appropriate penalty level as \$21,922, other factors militate for a lessening of that level. Under the Penalty Matrix, the following factors apply:

- Libra employs 149 person;
- Libra used less than ten times the threshold of the § 313 limit for lead in 2004;
- Other EPA Adjustment Factors, listed at page 14 of the Policy, including:
 - Libra has no History of Prior Violations (the Policy, page 16);
 - Attitude factors, including (1) Libra's preparedness and cooperation during the inspection, allowing access to records, prompt and responsive provision of supporting documents, and (2) Libra's good

faith and prompt efforts to comply with EPCRA.

2. Libra enjoyed no significant economic benefit from the non-compliance at issue.

3. Libra has a 27 year history of complete compliance with all federal and state laws and regulations.

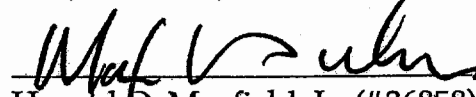
Hearing Request

Libra requests that it be heard before an Administrative Law Judge in this matter.

Respectfully submitted,

CAVITCH, FAMILO, DURKIN & FRUTKIN CO., L.P.A.

By:



Harold D. Maxfield, Jr. (#36858)

Max E. Dehn (#007600)

1717 East Ninth Street, 14th Floor

Cleveland, Ohio 44114

Telephone: (216) 621-7860

Fax: (216) 621-3415

Email: mdehn@cdf.com

hmaxfield@cdf.com

Attorneys for Libra Industries, Inc.

CERTIFICATE OF SERVICE

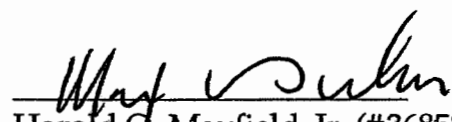
On this 27th day of June, 2008, a copy of Respondent Libra Industries, Inc.'s Motion to File an Answer Instanter, and Answer, was sent by ordinary U.S. mail to:

Ms. Ann L. Coyle (C-14J)
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Attorney for U.S. EPA

CAVITCH, FAMILO, DURKIN & FRUTKIN CO., L.P.A.

By:


Harold Q. Maxfield, Jr. (#36858)
Max E. Dehn (#0079600)
1717 E. 9th Street, 14th Floor
Cleveland, Ohio 44114
(216) 621-7860

Attorneys for Libra Industries, Inc.

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U.S. EPA REGION 5
CHICAGO, ILLINOIS

CERTIFICATE OF SERVICE

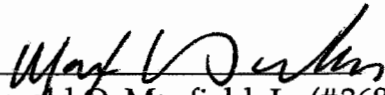
On this 16th day of July, 2008, a copy of Respondent Libra Industries, Inc.'s Motion to File an Answer Instanter, and Answer, was sent by ordinary U.S. mail to:

Ms. Marcy A. Toney
Presiding Officer
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Attorney for U.S. EPA

CAVITCH, FAMILO, DURKIN & FRUTKIN CO., L.P.A.

By:


Harold O. Maxfield, Jr. (#36858)
Max E. Dehn (#0079600)
1717 E. 9th Street, 14th Floor
Cleveland, Ohio 44114
(216) 621-7860

Attorneys for Libra Industries, Inc.

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