

**U.S. EPA REGION 1
HEARING CLERK**

Upon examination of the Initial Decision and the administrative record, the Environmental Appeals Board (“Board”) exercised its sua sponte review authority under 40

C.F.R. §§ 22.27(c)(4), 22.30(b) because, among other reasons, the Region failed to demonstrate that the Complaint was properly served on Respondent, and the Regional Judicial Officer overlooked discrepancies in the record by failing to confirm proper service of Complainant's Motion for Default Order and Memorandum in Support of Motion for Default Order (collectively, the "Motion for Default Order").

In its October 3, 2023 Order Exercising Sue Sponte Review and Remanding to Presiding Office for Further Proceedings ("Board Order"), the Board remanded the matter to the Regional Judicial Officer to undertake further proceedings to, among other things, demonstrate:

- (1) whether the Region properly served the Complaint to Respondent at an appropriate address;
- (2) whether service of the Motion for Default Order complied with the Consolidated Rules of Practice ("CROP"), 40 C.F.R. Part 22; and
- (3) whether service upon the Respondent complied with the Region's Standing Order regarding electronic service, Region 1, U.S. EPA, *Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents* (June 19, 2020) ("Standing Order").

Pursuant to 40 C.F.R. § 22.4(c)(10), the undersigned is issuing this Show Cause Order in accordance with the Board's remand.

Issue 1 – Service of the Complaint

With respect to the first service issue, the Board noted that the Region served Respondent with the Complaint, stating that "[t]he Complaint was sent by express mail hand-delivery via United Parcel Service of America, Inc., to Respondent's attorney, Nolan H. Tanous,

Esq., on or about February 22, 2022.” Board Order at p. 2, quoting Initial Decision at p. 3. The Initial Decision did not, however, address the relevance, if any, of a June 14, 2022 email from Mr. Tanous, which stated that he was not representing Charles Bridge in this matter, nor had he ever represented to any party that he was serving in this capacity. Email, *In re Charles Bridge, LLC*, Docket No. TSCA-01-2022-0027 (June 14, 2022), Docket Filing No. 3 (Attachment 1).

Although the Board took note of the apparent discrepancy between the Initial Decision and Mr. Tanous’s email disclaiming an attorney relationship, they recognized that Mr. Tanous is listed as the registered agent for Respondent in the Maine Department of the Secretary of State records. As a result, the Board agreed that service to him was proper.

Mr. Tanous’s assertion that he does not represent Charles Bridge in this matter, nor has he ever represented to any party that he was serving in this capacity, is puzzling. The Maine Secretary of State records show that Mr. Tanous not only created this Limited Liability Company on December 23, 2015, but continues to serve as Respondent’s “Member, Manager or other Authorized Person,” as well as its “Registered Agent of Record.” See Attachment 2, State of Maine Certificate of Formation, and Attachment 3, Maine Department of the Secretary of State, 2023 Annual Report (March 6, 2023).

The Board Order also noted that the address listed in the state records is different than the address used for service in this matter. As a result, the Board questioned the conclusion in the Initial Decision that service was proper without first confirming that the mailing address for service of the Complaint was an appropriate address.

After a more thorough review of the address that was used for service, Respondent’s 2015 Certificate of Formation, and the most recent Annual Report filed by Respondent with the

State of Maine, it is questionable whether the address discrepancy described in the Board Order is, in fact, a discrepancy. In particular, the notification of delivery record attached to Complainant's Motion for Default Order shows that the Complaint was delivered to the law office of Mr. Nolan H. Tanous at 143 Penobscot Avenue, Millinocket, Maine 04462. Attachment 4. According to the 2015 Certificate of Formation filed with the Maine Secretary of State, the address of Mr. Tanous, as Respondent's Noncommercial Registered Agent, is 143 Penobscot Avenue (physical location), P.O. 789 (mailing address), Millinocket, ME 04462. Attachment 2. The same addresses are listed in the 2023 Annual Report filed by the Respondent with the Maine Secretary of State. Attachment 3. In particular, the report lists Mr. Tanous as its "Registered Agent" and "Member, Manager, or Authorized Person." Respondent's Annual Report filing also states that the address of Mr. Tanous, as the Respondent's Registered Agent, is P.O. Box 789, Millinocket, ME 04462, and his address as Respondent's Member, Manager, or Authorized Person, is 143 Penobscot Avenue, P.O. Box 789, Millinocket, Maine 04462. To repeat, the record shows that the Complaint was delivered to 143 Penobscot Avenue, Millinocket, Maine 04462, which is the address listed as Respondent's physical address in the 2015 Certificate of Formation and as one of the addresses listed in its most recent Annual Report filing with the State of Maine.

The Board Order states that the Complainant must demonstrate and confirm that the Complaint was properly served. Accordingly, if Complainant would like to continue to move for the issuance of a Default Order and the assessment of a penalty, Complainant must submit a response to this Show Cause Order that demonstrates and confirms that the Complaint, which was served to Mr. Tanous's physical address, was served to an appropriate address. If

Complainant determines that the Complaint was not served to an appropriate address, Complainant must re-serve the Complaint to the correct address in accordance with the CROP, and proof of this service must be included in an Amended Motion for Default and the Memorandum in Support of the Motion.

Issues 2 & 3 – Electronic Service of the Motion for Default Order and Supporting Memorandum

With respect to the second and third service issues, Complainant must demonstrate, and the Regional Judicial Officer must confirm, that Complainant’s service of the Motion for Default Order complies with (1) the CROP, and/or (2) the Standing Order regarding the electronic service of documents.

The Motion for Default Order was served via email to Brian Lowry of Charles Bridge, LLC and to the Respondent’s Registered Agent, Mr. Tanous. Memorandum in Support of Motion for Default Order at 3, *In re Charles Bridge, LLC*, Docket No. TSCA-01-2022-0027 (June 13, 2022), Docket Filing No. 2. Although service of documents like the Motion for Default Order may be served by electronic means such as email, this type of service must be “consented to in writing.” 40 C.F.R. § 22.5(b)(2) (“Service may be made personally, by U.S. mail (including certified mail, return receipt requested, Overnight Express and Priority Mail), by any reliable commercial delivery service, or by facsimile or other electronic means, including but not necessarily limited to email, if service by such electronic means is consented to in writing.”). The Standing Order also authorizes electronic service of filed documents “provided the other party has consented to electronic service in writing.” Standing Order at p. 4. Such consent must be filed with the Regional Hearing Clerk. *Id.*

In the matter at hand, however, the record does not indicate whether the Respondent gave written consent to accept the electronic service of post-Complaint filed documents via email. In addition, there is no record that the Motion for Default Order and the supporting memorandum were mailed through the U.S. Postal Service to Respondent. Although the email from Complainant's Enforcement Counsel that transmitted the Motion for Default to the Regional Hearing Clerk (with copies to the parties) stated he would mail the Respondent hard copies of these documents, the record does not verify this mailing. *See* Attachment 4.

The Standing Order and Part 22 rules require parties to consent, in writing, to electronic service, and the Standing Order requires that this written consent be filed with the Regional Hearing Clerk. *See* 40 C.F.R. § 22.5(b)(2); Standing Order at p. 4. Alternatively, service can be made through, among other methods, the U.S. mail. *See* 40 C.F.R. § 22.5(b)(2). The record for this matter, however, includes neither Respondent's written consent to the electronic service of documents nor a record of the Motion for Default Order mailing to Respondent. Accordingly, if Complainant would like to continue to move for the issuance of a Default Order in this matter, they must respond to this Show Cause Order by confirming and demonstrating that the Motion for Default Order was properly served on Respondent, and/or re-serve the Motion for Default Order and the Supporting Memorandum in accordance with the Standing Order and/or Part 22 requirements. Proof of this compliance must be included in Complainant's response to this Show Cause Order.

SO ORDERED this 27th day of December 2023.

LeAnn Jensen
Regional Judicial Officer
U.S. EPA, Region 1