

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

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In the Matter of: )  
)  
John Rice, LLC )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. TSCA-4-2012-2646

ORDER FOR COMPLAINANT TO SUBMIT A SECOND SUPPLEMENT TO THE RECORD

Complainant, Director of the Air, Pesticides and Toxics Management Division of the United States Environmental Protection Agency (EPA) Region 4, has moved for entry of a Default Order against Respondent, John Rice, LLC, for its failure to file an Answer in this matter.

Complainant initiated this administrative action on May 25, 2012, alleging that Respondent violated Section 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2689, by failing to comply with Section 1018 of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. and its implementing regulations promulgated at 40 C.F.R. Part 745, Subpart F.

This proceeding is governed by the Consolidated Rules of Practice, 40 C.F.R. Part 22 (Consolidated Rules). Section 22.17 of the Consolidated Rules provides in part:

(a) *Default.* A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint. . . Default 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. . .

(b) *Motion for default.* A motion for default may seek resolution of all or part of the proceeding. Where the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested.

(c) *Default order.* When the Presiding Officer finds that a default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. The relief proposed in the complaint or in the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act.

40 C.F.R. § 22.17.

In addition, the Consolidated Rules provide in pertinent part that:

If the Presiding Officer determines that a violation has occurred and the complaint seeks a civil penalty, the Presiding Officer shall determine the amount of the recommended civil penalty based upon the evidence in the record and in accordance with any civil penalty criteria in the Act. The Presiding officer shall consider any civil penalty guidelines issued under the Act. The Presiding Officer shall explain in detail in the initial decision how the penalty to be assessed corresponds to any penalty criteria set forth in the Act. . . .If the respondent has defaulted, the Presiding Officer shall not assess a penalty greater than that proposed by complainant in the complaint, the rehearing information exchange or the motion for default, whichever is less.

40 C.F.R. § 22.27(b).

On July 18, 2013, Complainant in the above-captioned matter filed a Response to Order to Supplement the Record (“Complainant’s Response”). As directed in the undersigned’s Order to Supplement the Record, Complainant’s Response satisfactorily clarified the Exhibits that were attached to the Complaint, and fully explained the reference to the Proof of Service as “amended.”

Although, as set forth above, *should* Respondent be found to be in default for failing to respond to the Complaint, such default would constitute an admission of all facts in the Complaint. However, as Presiding Officer, in order to issue a Default Order I must determine that a violation occurred. Upon further review of the Complaint filed in this matter, it appears that additional information is warranted for the undersigned to reach a determination that a violation has occurred.

Specifically, paragraph 15 states as a general factual allegation that Respondent entered into four leases of certain residential properties, listing particular addresses and corresponding date of lease. Complaint goes on to state, as specific allegations, that at the time Respondent entered into the four listed leases, Respondent failed to provide lessees with certain requisite information and/or include certain requisite attachments to the leases, to wit: EPA-approved Lead hazard information pamphlet (Count 1-4); Lead Warning Statement attachment (Counts 5-8); Statement disclosing presence of lead-based paint and/or hazards or indicating no knowledge (Counts 10-13); List of lead-based paint and/or hazard records or indicate no records available (Counts 15-18).

All motions . . . shall state the grounds therefor with particularity. . . and be accompanied by any affidavit, certificate, other evidence or legal memorandum relied upon. 40 C.F.R. § 22.16(a)(2) and (4). Copies of the four above-listed leases is evidence relied upon by Complainant in pursuing the Default judgment; as such they should be attached and made part of this proceeding.

Furthermore, it appears that the paragraphs numbering the Counts do not identically correspond with the numbering of the Counts referred to in Complainant’s Motion for Default. It appears that Counts numbered 9, 14, 19 and 24 do not appear in the Complaint. Although this error is not fatal, confirmation that it is an inadvertent clerical error is appropriate.

IT IS ORDERED:

No later than January 10, 2014, Complainant is to submit:

1. Copies of each lease listed in Paragraph 15 of the Complaint;
2. The Inspection Report or other evidence relied upon for finding the violations alleged in the Complaint; and
3. A statement clarifying the discrepancy in numbers for the Counts in the Complaint and those in the Motion for Default.

Date: Dec. 13, 2013

  
Susan B. Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing Order for Complainant to Submit a Second Supplement to the Record, in the Matter of John Rice, LLC, Docket No. TSCA-4-2012-2646, on the parties listed below in the manner indicated:

**Certified Mail –**

**Return Receipt Requested:**

John W. Rice, LLC  
930 Avenue A  
Opelika, Alabama 36801

**Via Intra-Office Mail:**

Michiko Kono, Esq.  
Office of Environmental Accountability  
U.S. Environmental Protection Agency  
Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Date: 12-13-13



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region 4  
61 Forsyth Street, S.W.  
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404/562-9511