

CAVITCH

FAMILO DURKIN & FRUTKIN
Legal Professional Association

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June 27, 2008

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

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

Dear Ms. Woodard:

Enclosed please find the Respondent's Motion to File Answer Instanter, and Answer, in the above-captioned matter.

Very truly yours,



Max E. Dehn

MED/car
Enclosure

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REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

2008 JUN 30 PM 5: 28

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

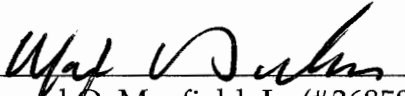
Under 40 C.F.R. §§ 22.6(c), and 22.15(a), the Answer was due on February 11, 2008. On February 8, 2008, the Answer was sent via Federal Express to Ms. Toney, and was also sent to Ms. Ann Coyle, Associate Regional Counsel, U.S. EPA, Region 5. On February 11, 2008 the Answer was delivered to Ms. Toney. 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: 
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Attorneys for Libra Industries, Inc.

From: Origin ID: BKLA (216)621-7860
Cyndee Richards
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Ship Date: 08FEB08
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System#: 9574067/INET8011
Account#: S *****

Delivery Address Bar Code



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

SHIP TO: 3128863186

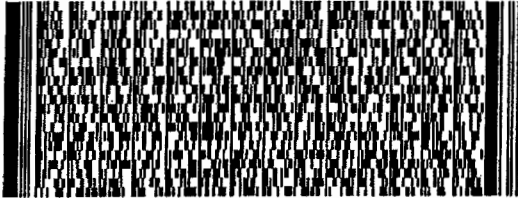
BILL SENDER

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

CHICAGO, IL 606043511

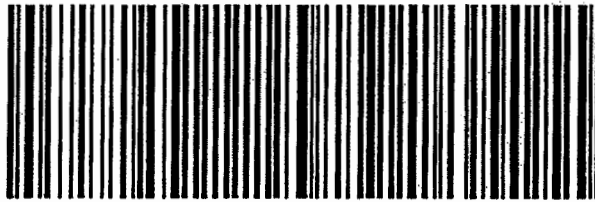
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EXHIBIT 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
US EPA REGION V

In the Matter of:) Docket No. EPCRA-05-2008-0005 29
)
LIBRA INDUSTRIES, INC.) ANSWER
MENTOR, OHIO,)
)
Respondent)

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

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US EPA REGION V

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.

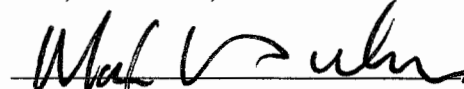
Hearing Request

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:



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hmaxfield@cfd.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 Instantly, and Answer, was sent by ordinary U.S. mail to:

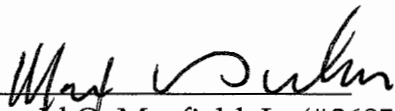
Ms. Ann L. Coyle (C-14J)
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Attorney for U.S. EPA

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