

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5th STREET
KANSAS CITY, KANSAS 66101
BEFORE THE ADMINISTRATOR

10 JUN -1 PM 1:03
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of)
)
KASHFLO, INC.) Docket No. TSCA-07-2010-0002
St. Louis, Missouri)
)
Respondent.)
)
Proceedings under Section 16(a) of the) RESPONSE TO
Toxic Substances Control Act,) ORDER TO SHOW CAUSE
15 U.S.C. § 2615(a)) AS TO RESPONDENT'S INTIAL
) PREHEARING EXCHANGE
)

RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE

Comes Now Attorney for Respondent and on behalf of Respondent,
pursuant to Order to Show Good Cause dated May 20, 2010 herein files this
Response pursuant to 40 CFR § 22.5 and 40 CFR § 22.7 on or before May 30, 2010.

1] Counsel for Respondent is undergoing vision problems associated
with re-attachment of the retina in his right eye for which he has undergone
eye surgery twice in the past two years. The vision in his left eye has also
been the subject of recommendation of laser surgery by the Barnes Retina
Institute in St. Louis. The undersigned expresses sincere apologies to Chief
Administrative Law Judge Biro and to the Agency for this occurrence.

2] When Respondent's Attorney received the Prehearing Order of
March 25, 2010 he misread and wrote the date for Respondent's compliance
with the information exchange in his calendar for May 15, 2010, which was a
Saturday and governed his actions accordingly.

3] Good cause shown includes a mistake or conduct that is not intentionally or recklessly designed to impede the judicial process.

4] By signature below, Respondent's Attorney individually and on behalf of Respondent states that such Good Cause Shown is the case here and that his conduct included a mistake that was not intentionally or recklessly designed to impede the matter at hand.

5] In support thereof, as set out on Exhibit "A" attached hereto and incorporated herein, the evidence shows that Respondent mailed its Initial Prehearing Exchange on Monday, May 17, 2010, the next business day.

6] As Further support Respondent's Attorney referenced Rule 6 FRCP in the opening paragraph of Respondent's Initial Pre-Hearing Response which recites that " When a stated time expires on a Saturday, Sunday or Federal holiday, the stated time period shall be extended to include the next business day", in harmony with 40 CFR § 22.7 (a) "Computation and extension of time".

7] In compliance with 40 CFR § 22.5 (b) (2) and 40 CFR § 22.7 (c), Exhibit "A" shows Respondent's Initial Prehearing Exchange was served by first class, certified mail, return receipt requested to the attention of EPA Chief Administrative Law Judge, Honorable Susan L. Biro, and to Robert W. Richards, Esq., Assistant Regional EPA Counsel on May 17, 2010.

8] As previously stated, good cause shown includes a mistake or conduct that is not intentionally or recklessly designed to impede the judicial process when Respondent, pursuant to Its Certificate of Service filed Its Response with the Regional Hearing Clerk by postage prepaid First Class Mail.

9] Counsel for Respondent has since obtained clarification as to procedural filing requirements and is filing this Response, along with a Motion for Leave to File Respondent's Supplemental First Amended Initial Prehearing Exchange containing a more complete detailed narrative statement as set forth on Page 3, Paragraph 3 of the Prehearing Order and otherwise pursuant to 40 CFR § 22.19.

10] Respondent Consents to such additional time for Complainant's Rebuttal Prehearing Exchange as determined just and fair by the Agency and the Chief Administrative Law Judge.

11] As Further good cause shown, Respondent has raised substantial defenses in Its Answer and Motions filed herein and requests fundamental fairness and substantive and procedural due process in order to present evidence to contest the Complaint and has not intended any disrespect to the Agency or the Chief Administrative Law Judge or engaged in conduct other than based upon Respondent's Attorney's circumstances with his eyesight in complying as of May 17, 2010 under 40 CFR § 22.5(b) (2) and 40 CFR § 22.7(c).

WHEREFORE, based upon the foregoing Response explaining why the compliance of Respondent with the Prehearing Order occurred as of May, 17, 2010, Respondent Respectfully Prays in the interests of Justice the Agency and the Chief Administrative Law Judge Find Good Cause Shown and allow this matter to proceed on to Prehearing Conference and/or to Hearing, together with such other and further relief as determined just and proper.

RESPECTFULLY SUBMITTED,

KASHFLO, INC., A MISSOURI CORPORATION



**ROBERT C. WITHINGTON # 31619 MBE #9903 E.D.MO.
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rcw@stllaw.com**

CERTIFICATE OF SERVICE

Comes Now Robert C. Withington, Attorney for Respondent and Certifies that on the 28th Day of May, 2010 This Supplemental First Amended Initial Prehearing Compliance with Exhibits Was Filed and Served pursuant to 40 CFR § 22.5; 40 CFR § 22.7; 40 CFR § 22.16 and 40 CFR § 22.19 by Federal Express Overnight Delivery And was SERVED UPON:

ORIGINAL

The Honorable Susan L. Biro; Chief Administrative Law Judge, Suite 350
Office of Administrative Law Judges; U.S. Environmental Protection Agency
Mail Code: 1900L; USEPA Headquarters; Ariel Rios Building;
1200 Pennsylvania Avenue, N.W.; Washington, D.C. 20460

ORIGINAL AND ONE COPY TO:

Sybil Anderson
Headquarters Hearing Clerk; Office of Administrative Law Judges, Suite 350
U. S. EPA; Mail Code 1900L; USEPA Headquarters; Ariel Rios Building;
1200 Pennsylvania Avenue, N.W.; Washington, D.C. 20460-2001

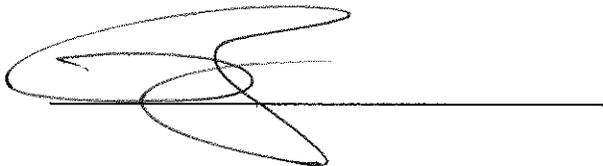
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ORIGINAL AND ONE COPY TO:

Regional Hearing Clerk; U.S. Environmental Protection Agency, Region 7,
901 N. 5th Street Kansas City, Kansas 66101

AND ONE ORIGINAL TO:

Robert W. Richards, Attorney, Office of Regional Counsel, U.S. Environmental
Protection Agency, Region 7, 901 N. 5th Street Kansas City, Kansas 66101

A handwritten signature in black ink, appearing to be 'Robert W. Richards', is written over a horizontal line. The signature is stylized and somewhat cursive.

