UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III 1650 Arch Street Philadelphia, Pennsylvania

In the Matter of:

U.S. EPA-REGION 3-RHC FILED-8JAN2020pm12:15

Bottos Construction, Inc.

U.S. EPA Docket No. TSCA-03-2019-0058

Respondent.

ORDER FOR SUPPLEMENTAL BRIEFING

On September 17, 2019, the Complainant¹ filed a Motion for Default in the above-captioned matter requesting that an Order be issued finding the Respondent, Bottos Construction, Inc., in default for failing to file an Answer to the Administrative Complaint and seeking the assessment of a civil monetary penalty in the amount of \$9,573.00 for violations of the Toxic Substances Control Act.

In order to evaluate and issue a ruling on the Motion for Default, the Complainant is HEREBY ORDERED to file with the Regional Hearing Clerk of EPA Region III and serve on the Respondent by **Thursday**, **January 30**, **2020** the following supplemental materials:

- Declaration/Affidavit of Penalty Witness Complainant is to provide a declaration or affidavit of an EPA employee or authorized representative in which the identified person provides an explanation of the calculation of the proposed civil monetary penalty. The declaration or affidavit should address, inter alia,:
 - The facts and evidence utilized for purposes of calculating the proposed civil monetary penalty;
 - The calculation of the proposed civil monetary penalty under the TSCA statutory factors;

¹ The March 28, 2019 Administrative Complaint in this matter identified the Director of the Land and Chemicals Division as the Complainant. As part of a realignment of EPA Region III subsequent to the filing of the Administrative Complaint, enforcement authority, including the authority to file complaints, was transferred to the Director of the Enforcement and Compliance Assurance Division.

- c. The calculation of the proposed civil monetary penalty pursuant the Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule (August 2010/April 2013); and
- d. The reason(s) that Complainant revised the proposed civil monetary penalty calculation after the filing of the Administrative Complaint.
- 2. Service of the Administrative Complaint The Certificate and Proof of Service of the Complaint (filed with the Regional Hearing Clerk on April 12, 2019) indicates that the Complainant on March 28, 2019 served via U.S. Postal Service Certified Mail Return Receipt Requested the Administrative Complaint on "Constantinos Bottos, President" of Bottos Construction, Inc. However, the corporate research and information provided by the Complainant as Exhibit G of the Motion for Default indicates that Constantinos Bottos is a "principal" of Bottos Construction, Inc. and not its president. Rather, Dino Bottos is identified as the "president" and "owner" of the company. The Complainant is directed to file a supplemental legal memo explaining the apparent discrepancy and discussing whether, under the Consolidated Rules of Practice and any relevant caselaw, service of the Complaint on Constantinos Bottos as "principal" of the company was valid.

Joseph J. Lisa

Regional Judicial and Presiding Officer

U.S. EPA Region III

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on the date provided below, I caused to be served the aforesaid Order for Supplemental Briefing upon the following persons in the manner designated:

Jennifer M. Abramson
Senior Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Mail Code 3RC30
Philadelphia, PA 19103
(Counsel for Complainant)

(Hand Delivery)

Dino Bottos, President Constantinos Bottos, Principal Bottos Construction, Inc. 1005 Sussex Boulevard Broomall, PA 19008 (Respondent) (USPS - Certified Mail/Return Receipt Requested)

JAN 08 2020

Date

Bevin Esposito

Regional Hearing Clerk