



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 19 2008

REPLY TO THE ATTENTION OF:

C-14J

BY INTEROFFICE POUCH

Honorable Susan L. Biro
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: *Libra Industries, Inc.*
Docket No. EPCRA-05-2008-0005

Dear Judge Biro:

Please find enclosed a copy of Complainant's Motion for Extension of Time to File Consent Agreement and Final Order and Initial Prehearing Exchange.

Sincerely yours,

A handwritten signature in blue ink that reads "Ann L. Coyle".

Ann L. Coyle
Associate Regional Counsel

Enclosure

cc: Mr. Max Dehn
Cavitch Familo Durkin & Frutkin

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:)
)
Libra Industries, Inc.)
Mentor, Ohio,)
Respondent.)
)
_____)

Docket No. EPCRA-05-2008-0005
Proceeding to Assess a Civil Penalty
Under Section 325(c) of the Emergency
Planning and Community Right-to-Know
Act of 1986, 42 U.S.C. § 11045(c)

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COMPLAINANT'S MOTION FOR EXTENSION OF TIME TO FILE CONSENT AGREEMENT AND FINAL ORDER AND INITIAL PREHEARING EXCHANGE

Pursuant to 40 C.F.R. §§ 22.7(b) and 22.16, Complainant, by and through her attorney, respectfully moves this court for an order granting a 30-day extension of time, or until December 22, 2008, to file a consent agreement and final order (CAFO) resolving this matter. In addition, Complainant requests an extension of time for filing its initial prehearing exchange. In support of this motion, Complainant states:

1. On January 3, 2008, EPA filed its Complaint in this matter.
2. On, or about, July 16, 2008, Respondent filed and perfected service of its Motion to File Answer Instantly and Answer.
3. In her October 20, 2008, Prehearing Order, the Presiding Officer ordered the parties to engage in settlement negotiations on or before October 31, 2008, and, if an amicable resolution is reached, to file a signed CAFO resolving the matter by November 21, 2008. In the event the matter is not settled, Complainant must file its initial prehearing exchange by November 21, 2008.
4. On October 29, 2008, the parties reached a settlement in principle and Complainant verbally explained the process and time frame necessary to file the CAFO by the

Prehearing Order deadline. Complainant provided notice of this settlement to the Presiding Officer in its October 31, 2008, Status Report.

5. On October 31, 2008, Complainant electronically transmitted a draft CAFO to Respondent for review and reiterated the process review and filing the CAFO. Attachment 1.

6. On November 12, 2008, Complainant contacted Respondent by email asking about the status of the CAFO and reminding Respondent of the November 21, 2008, CAFO filing deadline. Attachment 2.

7. On November 14, 2008, Respondent provided its approval of the CAFO, Attachment 3, and Complainant initiated EPA's internal review and sign-off process.

8. Once EPA completes its internal review process, it will mail hard copies the CAFO to Respondent for signature. After Respondent returns the CAFO, it will be signed and executed by appropriate EPA officials and filed with the Regional Hearing Clerk. Even if EPA completes its internal review today, it will need additional time beyond November 21, 2008, to obtain Respondent's signature and the signatures and approvals of EPA officials necessary to complete execution of the CAFO. Accordingly, not knowing when it will receive the signed CAFO back from Respondent, EPA respectfully requests a 30-day extension of time (until December 22, 2008) to file and serve a fully executed CAFO.

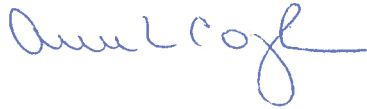
9. This Motion's request for an extension of time to file the CAFO is timely because the Court's November 21, 2008, CAFO filing deadline has not passed. Good cause exists to grant the Motion, because EPA timely provided the CAFO to Respondent. Good cause also exists because after receiving the signed CAFO back from Respondent, Complainant still must obtain final management approvals and signatures before it can file and serve the CAFO.

Respondent will not be prejudiced by the granting of a 30-day extension because this matter is settled in principle, and it is incurring no additional expense.

10. This Motion's request for an extension of time to file the initial prehearing exchange is timely because the Court's November 21, 2008, initial prehearing exchange filing deadline has not passed. Good cause exists to grant the Motion because the parties have reached a settlement in principle and negotiated the terms of a CAFO. Respondent will not be prejudiced by the granting of a 30-day extension because this Motion puts Respondent on notice of possible changes to the Prehearing Order scheduling deadlines.

WHEREFORE, Complainant respectfully moves this Court for an Order granting Complainant an extension of 30 days time, or until December 22, 2008, to file the fully executed CAFO and to file its initial prehearing exchange.

Respectfully submitted,



Ann L. Coyle
Associate Regional Counsel
U.S. Environmental Protection Agency Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3590
312.886.2248

ATTACHMENTS


Attachment 1: October 31, 2008, email from Ann Coyle to Max Dehn, draft CAFO excluded and settlement terms redacted.

Attachment 2: November 12, 2008, email from Ann Coyle to Max Dehn, draft CAFO excluded and settlement terms redacted.



Attachment 3: November 14, 2008, email from Max Dehn to Ann Coyle, settlement terms redacted.



Ann Coyle/R5/USEPA/US
10/31/2008 10:38 AM

To "Dehn, Max" <mdehn@cdf.com>
cc
bcc
Subject: Libra settlement 

Max,

Attached is the draft CAFO resolving the Libra matter. Please let me know if you have any comments. As I mentioned on the phone, once we have agreed on its terms, it will go through an internal approval process at EPA. Two original copies will be sent to you for signature by the company and one of those will be returned to you after the CAFO is filed and effective. 


--Ann



Libra CAFO.doc

Ann L. Coyle
Associate Regional Counsel
(312) 886-2248



Ann Coyle/R5/USEPA/US

11/12/2008 10:52 AM

To

Subject Fw: Libra settlement

Max,

We basically are out of time to get the CAFO entered within our court-ordered deadline. I sent you a draft of the CAFO almost two weeks ago and have heard nothing. As I mentioned, EPA has an internal review process, and after we negotiate its terms, EPA has to get the CAFO out to you, signed by Libra, returned, signed by two levels of EPA senior management, including the Regional Administrator, and filed by the 21st. I am disappointed in your lack of attention to this matter and expect to hear from you shortly. Also, to the extent we need an extension of time to get the CAFO filed, I expect you to submit it with an explanation of why you are causing more unnecessary delay.

--Ann

Ann L. Coyle
Associate Regional Counsel
(312) 886-2248

----- Forwarded by Ann Coyle/R5/USEPA/US on 11/12/2008 10:47 AM -----



Ann Coyle/R5/USEPA/US

10/31/2008 10:38 AM

To "Dehn, Max" <mdehn@cfd.com>

cc

Subject Libra settlement

Max,

Attached is the draft CAFO resolving the Libra matter. Please let me know if you have any comments. As I mentioned on the phone, once we have agreed on its terms, it will go through an internal approval process at EPA. Two original copies will be sent to you for signature by the company and one of those will be returned to you after the CAFO is filed and effective.

--Ann



Libra CAFO.doc

Ann L. Coyle
Associate Regional Counsel
(312) 886-2248



"Dehn, Max"
<mdehn@cfd.com>
11/14/2008 10:49 AM

To
Subject RE: Libra settlement

Sorry for the sloppy language. We now have Libra's approval, and the [REDACTED] is fine. The document is otherwise acceptable as provided. [REDACTED]

Max E. Dehn
CAVITCH
FAMILO DURKIN & FRUTKIN
1717 East Ninth Street
Fourteenth Floor
Cleveland, OH 44114-2876
T: (216) 621-7860, Ext. 124
F: (216) 621-3415
mdehn@cfd.com

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In the Matter of: Libra Industries, Inc.
Docket No.: EPCRA-05-2008-0005

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CERTIFICATE OF SERVICE

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I, Cynthia Dixon, certify that I filed the original of this COMPLAINANT'S MOTION FOR EXTENSION OF TIME TO FILE CONSENT AGREEMENT AND FINAL ORDER AND INITIAL PREHEARING EXCHANGE with EPA Region 5's Regional Hearing Clerk on November 19, 2008. In addition, I delivered, by pouch mail, a true and accurate copy to:

Honorable Susan L. Biro
Office of Administrative Law Judges (1900L)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

I also mailed true and accurate copies, by certified mail, return receipt-requested, to:

Mr. Max Dehn
Cavitch Familo Durkin & Frutkin
1717 East Ninth Street, 14th Floor
Cleveland, OH 44114

dated: November 19, 2008


Cynthia Dixon, Secretary