



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)	
)	
USA Wholesale Lubricant, Inc.,)	Docket No. CAA-HQ-2024-8443
)	
Respondent.)	

ORDER DENYING MOTION FOR DEFAULT

Pending before the Tribunal is Complainant’s¹ Motion for Default (“Motion”), filed November 6, 2024. In the Motion, Complainant “requests that the Presiding Officer find that default has occurred in this matter based on respondent USA Wholesale Lubricant, Inc.’s (‘USA Wholesale’ or ‘Respondent’) failure to answer the [Administrative] Complaint and Notice of Opportunity for Hearing filed on April 8, 2024 (‘Complaint’) or the subsequent Amended [Administrative] Complaint and Notice of Opportunity for Hearing filed on April 15, 2024 (‘Amended Complaint’), and requests that the Presiding Officer issue a default order requiring USA Wholesale to pay a civil penalty.” Mot. ¶ 1. As explained below, the Motion is **DENIED**.

I. PROCEDURAL BACKGROUND

According to the Motion, “Complainant commenced this proceeding by filing the Complaint with the Hearing Clerk on April 8, 2024.” Mot. ¶ 13. Complainant, proceeding under authority conferred by Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), alleges in Count I of the Complaint that Respondent did not possess or expend allowances for the importation of a bulk regulated substance—specifically that, on or about June 5, 2022, Respondent imported 15,640 kilograms of hydrofluorocarbon HFC-134a without possessing or expending the 22,365.2 consumption or application-specific allowances required for such activity. Compl. ¶¶ 1, 26-38.² Complainant alleges in Count II of the Complaint that Respondent failed to submit an advance notification report 14 days before the importation of the regulated substance. Compl. ¶¶ 39-42.³ Complainant alleges in Count III of the Complaint that Respondent failed to submit a quarterly report to EPA about the regulated substance within 45 days after the end of the

¹ Complainant is the Director of the Air Enforcement Division of EPA’s Office of Enforcement and Compliance Assurance. Compl. ¶ 2.

² The allegations are the same in the Amended Complaint, except the identity of the port through which the importation allegedly occurred is updated. Am. Compl. ¶¶ 26-38.

³ The allegations are the same in the Amended Complaint. Am. Compl. ¶¶ 39-42. The Complaint notes that the timetable set out in the regulation implicated in Count II was modified in 2023. Compl. ¶ 18 n.2; Am. Compl. ¶ 18 n.2.

second quarter of 2022. Compl. ¶¶ 43-45.⁴ Complainant asserts that these actions were violations of the provisions of 40 C.F.R. Part 84, Subpart A, which are regulations related to the phasedown of hydrofluorocarbon production and consumption promulgated under the American Innovation and Manufacturing Act of 2020, 42 U.S.C. § 7675. Compl. ¶¶ 12-25, 38, 42, 45.⁵

According to Complainant, on April 8, 2024, the Complaint and other documents⁶ were sent via U.S. postal mail to Respondent's CEO, Maher Fateh, at the following address: 2242 Quimby Road Building F, Unit A; San Jose, California 95122.⁷ Mot. ¶ 27; Mot. tbl.A. This address was ascertained from Respondent's website and the Customs form used for the 2022 importation at issue here. Mot. ¶ 27. Even though the Complaint was sent with Return Receipt Requested, the green return receipt postcard was not received by Complainant. Mot. ¶ 27.

Complainant reports that it then re-sent the Complaint and other documents to the Respondent's CEO at the Quimby Road address, this time using FedEx Standard Overnight Service with Signature Requested, on April 11, 2024. Mot. ¶ 28; Mot. tbl.A.⁸ The documents were signed for by "A.Adel" on April 12, 2024. Mot. ¶ 28; App. at 6.

Complainant filed an Amended Complaint on April 15, 2024. Complainant relates that it sent the Complaint, Amended Complaint, and other documents to Respondent's CEO at the Quimby Road address using both U.S. postal mail with Return Receipt Requested and FedEx Standard Overnight Service with Signature Requested. Mot. ¶¶ 29-30; Mot. tbl.A. The U.S. Postal Service failed to deliver the documents and the package was returned to sender. Mot. ¶ 29. FedEx attempted to deliver the documents three times from April 16 through April 18, 2024. Mot. ¶ 30. FedEx was unable to deliver these documents and the package was returned to sender. Mot. ¶ 30.

Complainant states that it then decided, "in an abundance of caution," to send the Complaint, Amended Complaint, and other documents to Respondent's CEO at a new address: 339 Educational Park Drive; San Jose, California 95133. Mot. ¶ 29; Mot. tbl.A. This address is the corporate address on file with the State of California's Office of the Secretary of State ("California Secretary of State"). Mot. ¶ 31; App. at 1-2. Complainant sent the package to

⁴ The allegations are the same in the Amended Complaint. Am. Compl. ¶¶ 43-45.

⁵ The allegations are the same in the Amended Complaint. Am. Compl. ¶¶ 12-25, 38, 42, 45.

⁶ The "other documents" include a copy of the Consolidated Rules of Practice (40 C.F.R. Part 22); the Standing Order Authorizing Electronic Filing in Proceedings Before the Office of Administrative Law Judges (Aug. 11, 2014); and the Revised Order Urging Electronic Filing and Service [in Proceedings Before the Office of Administrative Law Judges] (June 22, 2023).

⁷ Complainant also emailed Maher Fateh, but, under the Consolidated Rules of Practice, service by email is not allowed for a complaint, and with respect to the documents for which it is permitted, it must be consented to in writing. Mot. tbl.A; 40 C.F.R. § 22.5(b)(1), (2).

⁸ Table A in the Motion erroneously states that the April 11, 2024 mailing was delivered by "USPS." See Mot. ¶ 28; Mot. tbl.A.

Respondent's CEO at the Educational Park Drive address via FedEx Standard Overnight Service with Signature Requested on April 16, 2024. Mot. ¶ 31; Mot. tbl.A. FedEx attempted to deliver the package four times from April 17 through April 22, 2024. Mot. ¶ 31. The package was refused by someone at the Educational Park Drive address on April 23, 2024, and was returned to sender. Mot. ¶ 31.

Complainant recounts that it then sent the Complaint, Amended Complaint, and other documents to a firm that was listed as Respondent's agent for service process in the California Secretary of State's records in 2021. Mot. ¶ 32; Mot. tbl.A; App. at 7-8. The package was sent via FedEx Standard Overnight Service with Signature Requested, delivered on April 24, 2024, and signed for by "Y.Yang." Mot. ¶ 32; App. at 9. Complainant emailed the firm to confirm that it was, in fact, the registered agent for Respondent. App. at 10-11. The firm then replied to Complainant to convey that they were no longer Respondent's agent for service of process. Mot. ¶ 32; App. at 10-11.

Complainant indicates that it then hired a process server to personally serve Maher Fateh, who, besides being the CEO, is also listed as the current agent for service of process. Mot. ¶¶ 32-33; App. at 1-4. As Complainant tells it, on July 11, 2024, the process server "served" Respondent at the Educational Park Drive address. Mot. ¶ 33. The process server attested that the recipient was "Susan A". Mot. ¶ 33; App. at 12. Complainant states that "service of the Amended Complaint was complete on July 11, 2024" and that "Proof of service was made by filing of the properly executed receipts with the Hearing Clerk via the Office of Administrative Law Judge's [sic] Electronic Filing System on July 18, 2024." Mot. ¶ 35.

Complainant proffers that Respondent "has not filed an answer to the Amended Complaint as of the date of this Motion and Complainant has not received one." Mot. ¶ 46. Complainant proclaims that "default has occurred based on USA Wholesale's failure to file an answer to the Amended Complaint." Mot. ¶ 38.

On November 6, 2024, Complainant filed this Motion for Default, accompanied by an Appendix of 17 documentary exhibits. No response from Respondent to this Motion has been received by the Tribunal as of the date of this Order.

II. APPLICABLE LAWS AND REGULATIONS

Consolidated Rules of Practice

The Consolidated Rules of Practice⁹ governing this matter are set forth at 40 C.F.R. Part 22. Pertaining to default, they state:

A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint; upon failure to comply with

⁹ The full name of the rules set out at 40 C.F.R. Part 22 is the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits."

the information exchange requirements of § 22.19(a) or an order of the Presiding Officer; or upon failure to appear at a conference or hearing. 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.

40 C.F.R. § 22.17(a).

With respect to service of a complaint, the Consolidated Rules of Practice require that:

- (i) Complainant shall serve on respondent, or a representative authorized to receive service on respondent's behalf, a copy of the signed original of the complaint, together with a copy of these Consolidated Rules of Practice. Service shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.
- (ii) (A) Where respondent is a domestic or foreign corporation, a partnership, or an unincorporated association which is subject to suit under a common name, complainant shall serve an officer, partner, a managing or general agent, or any other person authorized by appointment or by Federal or State law to receive service of process.

. . . .
- (iii) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed receipt. Such proof of service shall be filed with the Regional Hearing Clerk immediately upon completion of service.

Id. § 22.5(b)(1).

California Code of Civil Procedure

Chapter 4 of the California Code of Civil Procedure governs service. Article 4 of that Chapter states:

A summons may be served on a corporation by delivering a copy of the summons and the complaint by any of the following methods:

- (a) To the person designated as agent for service of process as provided by any provision in Section 202, 1502, 2105, or 2107 of the Corporations Code (or Sections 3301 to 3303, inclusive, or Sections 6500 to 6504, inclusive, of the

Corporations Code, as in effect on December 31, 1976, with respect to corporations to which they remain applicable).

- (b) To the president, chief executive officer, or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a controller or chief financial officer, a general manager, or a person authorized by the corporation to receive service of process.

Cal. Civ. Proc. Code § 416.10(a), (b). Article 3 states that “A summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served. Service of a summons in this manner is deemed complete at the time of such delivery.” *Id.* § 415.10. This Article continues:

In lieu of personal delivery of a copy of the summons and complaint to the person to be served as specified in Section 416.10, 416.20, 416.30, 416.40, or 416.50, a summons may be served by leaving a copy of the summons and complaint during usual office hours in his or her office or, if no physical address is known, at his or her usual mailing address, other than a United States Postal Service post office box, with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. When service is effected by leaving a copy of the summons and complaint at a mailing address, it shall be left with a person at least 18 years of age, who shall be informed of the contents thereof. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

Id. § 415.20(a).

Federal Rules of Civil Procedure

Rule 4 of the Federal Rules of Civil Procedure governs service. Rule 4(h) pertains to service upon corporations, partnerships, and associations, and it states:

Unless federal law provides otherwise or the defendant’s waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

- (1) in a judicial district of the United States:

- (A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or

(B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant[.]

Fed. R. Civ. P. 4(h). Rule 4(e), for service upon an individual within the United States, commands:

Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made[.]

Fed. R. Civ. P. 4(e)(1).

III. DISCUSSION

“In order for a default judgment to enter, service of process on the respondent . . . must be valid.” *Las Delicias Cmty.*, 14 E.A.D. 382, 387 (EAB 2009). The record here does not demonstrate adequate service of process on Respondent.

When the respondent is a domestic corporation,¹⁰ the Consolidated Rules of Practice require service on an officer, partner, or managing or general agent. 40 C.F.R. § 22.5(b)(1)(ii)(A). According to the California Secretary of State’s records, Maher Fateh is Respondent’s Chief Executive Officer, Secretary, and Chief Financial Officer; no other officers are listed. App. at 1-2. Maher Fateh is also named as the agent for service of process. App. at 1-4. Therefore, since there is no hint that any other person has been authorized to act as an agent for Respondent, Maher Fateh, and only Maher Fateh, is the person to whom service of the Complaint and Amended Complaint must be directed in order to comply with the requirements of the Consolidated Rules of Practice.

The Consolidated Rules of Practice allow personal service. 40 C.F.R. § 22.5(b)(1)(i). Personal service means delivering the Complaint to Maher Fateh personally. *See, e.g.*, Fed. R. Civ. P. 4(e)(2)(A) (“[A]n individual . . . may be served in a judicial district of the United States by . . . delivering a copy of the summons and of the complaint to the individual personally[.]”); Cal. Civ. Proc. Code § 415.10 (“A summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served.”). There is no evidence, such as an affidavit from a process server who delivered documents to Maher Fateh, that Maher Fateh

¹⁰ Respondent is a “Corporation,” incorporated under the laws of California per the California Secretary of State’s records. *See* App. at 1 (“Statement of Information – Corporation”); App. at 4 (Respondent is listed as a “Stock Corporation”); App. at 7 (Entity Type is “Corporation”).

was ever personally served with the Complaint or Amended Complaint. See 40 C.F.R. § 22.5(b)(1)(iii).

The Consolidated Rules of Practice also allow service by commercial delivery or certified mail with return receipt requested. 40 C.F.R. § 22.5(b)(1)(i). When these methods are used, “Proof of service of the complaint shall be made . . . by properly executed receipt.” *Id.* § 22.5(b)(1)(iii). When utilizing either of these methods, the documents must go to the address of record. See *Peace Indus. Grp.*, 17 E.A.D. 348, 367 n.14 (EAB 2016) (Environmental Appeals Board, in discussing *Jonway Motorcycle (USA) Company*, CAA Appeal No. 14-03, 2014 EPA App. LEXIS 45 (EAB, Nov. 14, 2014), stated that it “strongly encourages the Agency to serve respondents in the first instance at the agent’s address of record”). Here, the Educational Park Drive address is the address listed in the California Secretary of State’s records, and this is the address where service should have been directed. App. at 1-2. It seems that Complainant made one attempt to serve Respondent at the Educational Park Drive address by commercial delivery service. Mot. ¶ 31. On April 16, 2024, Complainant sent the Complaint and Amended Complaint to this address via FedEx, but the package was not delivered and was returned to Complainant. Mot. ¶ 31. Hence, there is no “proof of service”—no evidence that the Complaint or Amended Complaint were ever successfully delivered to this address by commercial service or the U.S. Postal Service. Consequently, this attempt at service was not effective.

The earlier mailings—those sent on April 8 through April 15, 2024—went to the Quimby Road address, which is an improper address for purposes of service, as the Quimby Road address is not the address of record. Complainant sent the Complaint and Amended Complaint to the Quimby Road address because that was the address listed on Respondent’s website and it was the address included in the Customs form used for the 2022 importation that is the basis of the allegations in the Complaint and Amended Complaint. Mot. ¶ 27. Even though it may not have been *unreasonable* for Complainant to attempt service at the Quimby Road address, *Jonway* clarifies that other conditions must be met for service to be deemed effective under circumstances like these. In *Jonway*, the Board allowed service at an address that was not the registered address for a corporate respondent’s registered agent. 2014 EPA App. LEXIS 45, at *12-13. However, postal delivery of the complaint had failed at the address of record. *Id.* at *11. As the Board explained:

The Board generally expects EPA to serve complaints on respondents or their authorized agent at the official address of record designated for service, as EPA did here. Where respondents fail to accept service at their officially designated addresses, however, there is nothing in the rules that prevents EPA from serving their designated agent at an address where he can be found.

Id. at *12 n.13. The alternate address in *Jonway* is described as “a nearby address where EPA knew [the registered agent] also conducted business[.]” *Id.* at *11. Importantly, the registered agent acknowledged his “actual receipt” of the complaint. *Id.* at *11, *12.

Informed by *Jonway's* reasoning, I cannot deem that any of the packages sent to the Quimby Road address properly effected service. The package sent on April 11, 2024, to the Quimby Road address was successfully delivered via FedEx; there is signed proof of delivery. Mot. ¶ 28; App. at 6. However, there is no evidence that the Quimby Road address was a place where Maher Fateh “can be found” or “conducted business,” and there certainly is no later acknowledgment of actual receipt.¹¹ Therefore, the delivery of the Complaint to this alternate address did not properly effect service.

By similar reasoning, the first package, mailed on April 8, 2024, to the Quimby Road address, also failed to effect service. It seems that this package was successfully delivered, but it is unclear whether the return receipt postcard was signed and put back into the postal stream, because the signed postcard was never received by Complainant. Mot. ¶ 27; Compl. Attach. 1. The lack of any proof of service is sufficient by itself to regard this a failed attempt at service. And, as just highlighted, employing the Quimby Road address was improper because there is no evidence that Maher Fateh could be found there, or conducted business there. Since an improper address was used, and moreover, because there is no confirmation of receipt, this cannot be deemed a successful attempt to serve the Complaint.¹²

The two packages sent on April 15, 2024, to the Quimby Road address also failed to properly complete service on Respondent. One package was sent by U.S. postal mail and the other was sent via FedEx; both were returned to sender. Mot. ¶¶ 29-30. There is no proof of service for either package; in addition, an improper address was used. Therefore, neither of these attempts effectuated service.

Having no success with service by postal mail/commercial delivery to the Respondent's addresses, the documents were sent to a firm that was listed as the agent for service of process in 2021. Mot. ¶ 32; App. at 7-8. The documents were received and signed for; however, the firm promptly informed Complainant that they were no longer acting as Respondent's agent for service of process. Mot. ¶ 32; App. at 9-11. If Respondent had intended to maintain this firm as a valid recipient of documents for service of process, the firm would have been included in the 2023 California Secretary of State filings. That the firm was not, suggests that Respondent no longer intended to authorize it to accept service on Respondent's behalf. Therefore, sending documents to the agent listed on the 2021 Secretary of State records instead of the agent listed on the 2023 Secretary of State records was not a valid method for effectuating service. *Cf. Neman*, 5 E.A.D. 450, 458 (EAB 1994) (saying, of attempted service of a TSCA enforcement complaint on a respondent's bankruptcy attorney, that “[a]n attorney can only act

¹¹ In discussing *Jonway* in *Peace Industry Group*, the Board notes that “The Board does not reach the question of whether the result in *Jonway* would have been different absent respondents' acknowledgement of actual receipt.” *Peace Indus. Grp.*, 17 E.A.D. at 367 n.14. There is no need to address this circumstance, since there is nothing in the record suggesting that Respondent's registered agent could be found at the Quimby Road address or conducted business there.

¹² See note 11, above.

as a client's representative for the purpose of receiving service if the client actually authorizes him or her to do so, either expressly or impliedly").

It seems that as a last resort, Complainant hired a process server. The affidavit submitted by the process server also fails to demonstrate that service was effective. Complainant reports that "Complainant hired a process server to personally serve Maher Fateh" at Respondent's Educational Park Drive address. Mot. ¶ 33. But, the process server failed to personally serve Maher Fateh. Instead, on July 11, 2024, the process server gave the documents to a person at the Educational Park Drive address named "Susan A". Mot. ¶ 33; App. at 12. It is not clear who this person was, especially since her last name was not recorded, or what her role was with Respondent, if any.¹³ She is listed on the Affidavit of Service as the "Authorized Agent," but she is not identified as such in the California Secretary of State's records. As already discussed, those records do identify Maher Fateh as both "an officer" and an agent for service of process—and therefore as an appropriate target for service under the Consolidated Rules of Practice. 40 C.F.R. § 22.5(b)(1)(ii)(A). Without elaboration on the relationship between "Susan A" and Respondent, I am disinclined to find that she was an "authorized agent" capable of accepting service for Respondent. App. at 1-4, 12. This is not sufficient to declare service on Respondent effective pursuant to the Consolidated Rules of Practice.¹⁴

To comply with the requirements of the Consolidated Rules of Practice, service may also be made on "any other person authorized by . . . State law to receive service of process." 40 C.F.R. § 22.5(b)(1)(ii)(A). Following the directives of State law is therefore an additional way to effect service that would satisfy the requirements of the Consolidated Rules of Practice. Under California law, service on a corporation is allowed by delivery "[t]o the person designated as agent for service of process" or "[t]o the president, chief executive officer, or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a controller or chief financial officer, a general manager, or a person authorized by the corporation to receive service of process." Cal. Civ. Proc. Code § 416.10(a), (b). And, service may be made "by personal delivery" or, in the case of a corporation, "by leaving a copy of the summons and complaint during usual office hours in [the person to be served's] office or, if no physical address is known, at his or her usual mailing address . . . with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left." *Id.* §§ 415.10, 415.20(a).

¹³ A potential explanation for why the process server did not personally serve Maher Fateh, and instead left the documents at the registered address, may be that the process server thought he was complying with California State law for serving corporations, as described below.

¹⁴ It is possible Complainant had reservations as well, revealed by its careful wording of what transpired. Notably, Complainant states that it "hired a process server to personally serve Maher Fateh, at USA Wholesale's Principal Address The process server served USA Wholesale on July 11, 2024 at USA Wholesale's Principal Address" Mot. ¶ 33. The intention of personally serving Maher Fateh is transformed into the deed of serving the Respondent corporation. But, the method described for "serv[ing] USA Wholesale" does not conform to the procedures described in the Consolidated Rules of Practice.

California law identifies more potential targets of service than the Consolidated Rules of Practice with respect to effectuating service on a corporation. *Compare* Cal. Civ. Proc. Code § 416.10 with 40 C.F.R. § 22.5(b)(1)(ii)(A). From the process server's affidavit, it is known that "Susan A" personally received the documents on July 11, 2024. App. at 12. It is unclear if "Susan A" qualifies as any of the roles that are absent from the Consolidated Rules of Practice but listed in the California Code of Civil Procedure (for example, assistant secretary, assistant treasurer, etc.). See Cal. Civ. Proc. Code § 416.10(b). The process server only describes her as "Authorized Agent," but without more, I am reluctant to conclude that "Susan A" was authorized to receive service on behalf of Respondent. App. at 12. Due to this missing information, I cannot find that service was effected when "Susan A" received the documents.

Service also was not completed by the alternative means for serving a corporation allowed by State law. See Cal. Civ. Proc. Code § 415.20(a). The process server's affidavit is evidence that the Complaint and Amended Complaint were left at the Educational Park Drive address (the registered office address of Respondent's agent Maher Fateh) (although it is uncertain whether "Susan A" was "the person who is apparently in charge thereof"). App. at 12. But, there is no evidence that copies of the Complaint and Amended Complaint were then mailed to the Educational Park Drive address. Therefore, because the mandates of California law were not followed to the letter, service was rendered ineffective.

Finally, the Consolidated Rules of Practice also allow service on "any other person authorized by appointment or by Federal . . . law to receive service of process." 40 C.F.R. § 22.5(b)(1)(ii)(A). Yet, Federal law does not salvage Complainant's deficient service here. With respect to corporations, Rule 4 of the Federal Rules of Civil Procedure allows delivery of a complaint to "an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process" Fed. R. Civ. P. 4(h)(1)(B). There is no evidence that "Susan A" falls into any of the enumerated roles; thus, the "delivery" that occurred on July 11, 2024, did not complete service. Rule 4 also allows service by "following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made[.]" Fed. R. Civ. P. 4(e)(1). As previously described, the mandates of California law were not satisfied here. Therefore, service was also insufficient to satisfy the requirements of Federal law.

Complainant cites *Peace Industry Group* to buttress its position that its service was effective. Complainant argues that "[s]ervice on a corporation 'does not require that the named addressee be the person who signs the return receipt,' as the Rules only require that it be 'properly executed' under 40 C.F.R. § 22.5(b)(1)(iii) and does not require 'restricted delivery' to the specific person," and that "[s]ervice is proper under the Rules of Practice where a secretary employed by the corporation signs the return receipt." Mot. ¶ 34 (citing *Peace Indus. Grp.*, 17 E.A.D. 348). However, *Peace Industry Group* was concerned with the identity of the person who signs the return receipt postcard: "In short, in serving a corporation, if EPA properly addresses and mails the complaint by certified mail, and an individual at that address signs the return receipt, service is complete." 17 E.A.D. at 364. *Peace Industry Group* is silent with respect to personal service, and variations on that theme, such as personally delivering a

document to someone other than the registered agent. In the instance here that is most akin to the situation in *Peace Industry Group*, where Complainant actually received signed verification of delivery of the Complaint to someone other than the addressee (Mot. ¶ 28; App. at 6), Complainant used an improper address—the Quimby Road address. *Peace Industry Group*'s exhortation that EPA must "*properly address[] and mail[] the complaint . . .*" went unheeded, and Complainant's reliance on this precedent is misplaced.

There is insufficient evidence that Respondent was properly served the Complaint and Amended Complaint. Complainant's Motion for Default is **DENIED**.

Because Complainant's Motion is denied, the arguments concerning penalty are not addressed at this time.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

Dated: January 14, 2025
Washington, D.C.

In the Matter of *USA Wholesale Lubricant, Inc.*, Respondent.
Docket No. CAA-HQ-2024-8443

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Denying Motion for Default**, dated January 14, 2025, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.



Mary Angeles
Paralegal Specialist

Original by OALJ E-Filing System to:
Mary Angeles, Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency
<https://yosemite.epa.gov/OA/EAB/EAB-ALJ Upload.nsf>

Copy by Regular and Electronic Mail to:
Conner Kingsley
Office of Civil Enforcement, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Mail Code 2242A
Washington, DC 20460
Email: kingsley.conner@epa.gov
For Complainant

Copy by Certified Mail Return Receipt, Regular Mail, and Electronic Mail to:
Maher Fateh, CEO
USA Wholesale Lubricant, Inc.
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San Jose, CA 95133
Certified Mail No: 7008-3230-0000-9380-9192
Email: maherfateh73@gmail.com
For Respondent

Dated: January 14, 2025
Washington, D.C.