



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

In the Matter of:)
Robert Lauter d/b/a Prime Cut Paint,) Docket No. TSCA-03-2023-0034
Respondent.)

ORDER WITHDRAWING ORDER TO RESPONDENT TO SHOW CAUSE

This proceeding was initiated on December 7, 2022, when Complainant, the Director of the Enforcement and Compliance Assurance Division of the U.S. Environmental Protection Agency, Region 3, filed an Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") against Respondent Robert Lauter d/b/a Prime Cut Paint for alleged violations of Section 409 of the Toxic Substances Control Act, 15 U.S.C. § 2689. Appearing pro se, Respondent subsequently filed a document, entitled "Response to Administrative Complaint," with the Regional Hearing Clerk of Region 3. Treating the document as an answer, the Regional Hearing Clerk then forwarded the matter to this Tribunal for adjudication.

Upon being designated to preside, I issued two orders: 1) an Order to Respondent to File Answer, in which I identified deficiencies in the "Response to Administrative Complaint" and directed Respondent to file and serve, no later than February 10, 2023, an answer that complies with the procedural rules governing this proceeding¹; and 2) a Prehearing Order, in which I set deadlines for a number of prehearing procedures. Subsequently, on February 23, 2023, I issued an Order to Respondent to Show Cause, in which I noted that Respondent had not complied with the Order to Respondent to File Answer, requested an extension of the deadline to comply, or otherwise communicated with this Tribunal. I then ordered Respondent to file a document showing cause for this failure. Respondent promptly notified the Headquarters Hearing Clerk that he had, in fact, sent an answer to this Tribunal by first class U.S. mail on February 1, 2023, in response to the Order to Respondent to File Answer, and counsel for Complainant confirmed that he had been served a copy by email.

I apologize for this error and hereby withdraw the Order to Respondent to Show Cause. Respondent is reminded that, as set forth in the Order of Designation, Order to Respondent to File Answer, and Prehearing Order, this Tribunal's ability to receive filings and correspondence by U.S. mail is limited and that a party filing a document by U.S. mail shall notify the Headquarters Hearing Clerk every time it files a document in such a manner in order to avoid

¹ Styled as the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice" or "Rules"), the applicable procedural rules are set forth at 40 C.F.R. §§ 22.1 to 22.45.

oversights such as the one that occurred here. For these reasons, electronic filing is also strongly encouraged.

I note that the answer filed by Respondent contains a term of settlement. Unless a fully-executed consent agreement and final order is filed to resolve a matter by settlement, the presiding Administrative Law Judge may need to rule on liability and/or the appropriate penalty. If the record contains evidence relating to the terms of an incomplete settlement – such as draft, proposed, or partially executed settlement agreements; tentatively agreed upon settlement terms; settlement offers; or even statements made by parties in negotiations related to a potential settlement – it could create the appearance of bias. Thus, such terms of settlement should never be presented to the presiding Administrative Law Judge, and the specific settlement offer disclosed by Respondent in his answer has been stricken from the record.

Finally, I note that Respondent did not request a hearing in his answer. On this subject, the Rules of Practice provide, “A hearing upon the issues raised by the complaint and answer may be held if requested by respondent in its answer. If the respondent does not request a hearing, the [Administrative Law Judge] may hold a hearing if issues appropriate for adjudication are raised in the answer.” 40 C.F.R. § 22.15(c). I find that Respondent raised issues appropriate for adjudication in his answer. Therefore, notwithstanding the absence of a request for a hearing in Respondent’s answer, I intend to conduct one, and the prehearing deadlines set forth in the Prehearing Order remain in effect.

SO ORDERED.



Susan L. Biro
Chief Administrative Law Judge

Dated: February 27, 2023
Washington, D.C.

In the Matter of *Robert Lauter d/b/a Prime Cut Paint*, Respondent.
Docket No. TSCA-03-2023-0034

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Withdrawing Order to Respondent to Show Cause**, dated February 27, 2023, 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:
U.S. Environmental Protection Agency
Office of Administrative Law Judges
https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf

Copy by Electronic Mail to:
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Respondent

Dated: February 27, 2023
Washington, D.C.