



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

In the Matter of: )
Ro Cher Enterprises, Inc., ) Docket No. TSCA-05-2023-0004
d/b/a Door and Window Warehouse )
Outlet, Inc.; Door and Window )
Warehouse, Co.; and/or )
Door and Window Superstore, )
Respondent. )

ORDER FOR RESPONDENT TO FILE ANSWER

This proceeding was initiated on April 21, 2023, when Complainant, the Division Director of the Enforcement and Compliance Assurance Division at the U.S. Environmental Protection Agency, Region 5, filed a Complaint and Notice of Opportunity for Hearing ("Complaint") against Respondent Ro Cher Enterprises, Inc., d/b/a Door and Window Warehouse Outlet, Inc., Door and Window Warehouse, Co., and/or Door and Window Superstore, for alleged violations of Section 409 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2689.

The Regional Hearing Clerk for Region 5 received a response from Respondent's owner and representative, Roger P. Janakus, that was filed July 6, 2023. The response stated that Respondent could no longer afford attorney fees and that a previously retained attorney had declined to represent Respondent in this matter, because it is not within his scope of practice. Respondent further offered general responses to its alleged violations but did not request a hearing. However, treating his response as an Answer to the Complaint, the Regional Hearing Clerk forwarded the matter to this Tribunal for adjudication. I was designated to preside by Order of Designation issued simultaneously with this Order.

Upon review of the response sent by Respondent, I note that it does not fully comport with the rules governing Answers that are set forth in the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1 to 22.45 ("Rules of Practice" or "Rules"). With respect to the contents, filing, and service of an answer to a complaint, the Rules of Practice provide as follows:

- (a) General. Where respondent: Contests any material fact upon which the complaint is based; contends that the proposed penalty, compliance or corrective action order . . . is inappropriate; or contends that it is entitled to judgment as a matter of law, it shall file

an original and one copy of a written answer to the complaint with the Regional Hearing Clerk and shall serve copies of the answer on all other parties. Any such answer to the complaint must be filed with the Regional Hearing Clerk within 30 days after service of the complaint.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state: The circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which respondent disputes; the basis for opposing any proposed relief; and whether a hearing is requested.

(c) *Request for a hearing.* 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 Presiding Officer may hold a hearing if issues appropriate for adjudication are raised in the answer.

(d) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

(e) *Amendment of the answer.* The respondent may amend the answer to the complaint upon motion granted by the Presiding Officer.

40 C.F.R. § 22.15. In the response that he sent to the Regional Hearing Clerk and counsel for Complainant, Respondent did not clearly admit, deny, deny for lack of knowledge, or otherwise explain *each* paragraph of the Complaint that alleges a fact or facts. Respondent also did not request a hearing on the issues.

Consequently, no later than **August 11, 2023**, Respondent is **ORDERED** to file an Answer that complies with the Rules of Practice by responding to each paragraph of the Complaint that alleges a fact or facts and stating whether it desires a hearing upon the issues. Notwithstanding the Rules' instructions to file an Answer with the Regional Hearing Clerk, because the matter has now been forwarded to this Tribunal, Respondent shall file its Answer with this Tribunal and shall serve a copy on Complainant as directed below.

*RESPONDENT IS CAUTIONED THAT FAILURE TO TIMELY COMPLY WITH THIS ORDER MAY RESULT IN THE ENTRY OF DEFAULT JUDGMENT AGAINST HIM.*

**Filing and Service:** The Rules of Practice provide that the original and one copy of each document intended to be part of the record of this proceeding (excluding a fully-executed

Consent Agreement and Final Order, which must be filed with the Regional Hearing Clerk) shall be filed with the Headquarters Hearing Clerk of the Office of Administrative Law Judges (“OALJ”).<sup>1</sup> 40 C.F.R. § 22.5(a)(1). The Rules of Practice further provide that this Tribunal may authorize filing by an electronic filing system, *id.*, which it did by Standing Order Authorizing Electronic Filing in Proceedings before the Office of Administrative Law Judges, available on the OALJ’s website at <https://www.epa.gov/sites/production/files/2014-10/documents/alj-standing-order-e-filing.pdf>.

Electronic filing is strongly encouraged. To file a document electronically, the document shall be submitted to the Headquarters Hearing Clerk using the OALJ E-Filing System, a web-based tool that can be accessed by visiting the OALJ’s website at [www.epa.gov/alj](http://www.epa.gov/alj).<sup>2</sup> A document filed electronically is deemed to constitute both the original and one copy of the document.

Any party seeking to file electronically must first register with the OALJ E-Filing System at [https://yosemite.epa.gov/OA/EAB/EAB-ALJ\\_Upload.nsf/HomePage?ReadForm](https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf/HomePage?ReadForm). Registration is not automated. There may be a delay of one to two business days between the time a party applies for registration and the time that party is able to upload documents into the system.

A document submitted to the OALJ E-Filing System is considered “filed” at the time and date of electronic receipt, as recorded by the OALJ E-Filing System immediately upon receipt. To be considered timely, documents submitted through the OALJ E-Filing System must be received by 11:59 p.m. Eastern Time on the date the document is due, unless another time is specified by the presiding judge. Within an hour of a document being electronically filed, the OALJ E-Filing System will generate an electronic receipt of the submission that will be sent by email to both the party submitting the document and the Headquarters Hearing Clerk.<sup>3</sup>

The OALJ E-Filing System will accept any type of digital file, but the file size is limited to 70 megabytes.<sup>4</sup> Electronically filed textual documents must be in Portable Document Format

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<sup>1</sup> Pursuant to the Pilot Program to Migrate Certain Regional Hearing Clerk Functions to the Headquarters Hearing Clerk, the OALJ and the Headquarters Hearing Clerk shall maintain the official record and be the proper filing location for all contested cases in which an answer was filed after May 1, 2012. For more information on the Pilot Program, see the OALJ’s website at <https://www.epa.gov/alj/administrative-law-judges-pilot-program-migrate-certain-regional-hearing-clerk-functions>.

<sup>2</sup> The parties are hereby advised that the OALJ will be launching a new electronic filing system in 2023. Details about the new system will be communicated to the parties in advance of it becoming operational.

<sup>3</sup> The emailed electronic receipt will be the filing party’s only proof that the OALJ received the submitted document. The absence or presence of a document on the OALJ’s E-Docket Database webpage, available at [https://yosemite.epa.gov/oarm/alj/alj\\_web\\_docket.nsf](https://yosemite.epa.gov/oarm/alj/alj_web_docket.nsf), or on the Agency’s Administrative Enforcement Dockets webpage, available at <https://yosemite.epa.gov/oa/rhc/epaadmin.nsf>, is not proof that the document was or was not received. If the filing party does not receive an electronic receipt within one hour after submitting the document through the OALJ E-Filing System, the Headquarters Hearing Clerk may be able to confirm receipt of the document but not earlier than one hour after the document was submitted.

<sup>4</sup> If a party’s multimedia file exceeds 70 megabytes, the party may contact the Headquarters Hearing Clerk at (202) 564-6281 or [angeles.mary@epa.gov](mailto:angeles.mary@epa.gov) for instructions on alternative electronic filing methods.

("PDF"). A motion and any associated brief may be filed together through the OALJ E-Filing System. However, any documents filed in support of a brief, motion, or other filing, such as copies of proposed exhibits submitted as part of party's prehearing exchange, should be filed separately as an attachment. Where a party wishes to file multiple documents in support of a brief, motion, or other filing, rather than filing a separate attachment for each such document, the documents should be compiled into a single electronic file and filed as a single attachment, to the extent technically practicable, with each document appropriately bookmarked within the file. Attached to this Order is further guidance on the use of the OALJ E-Filing System for purposes of electronic filing.

Alternatively, documents may be filed by U.S. mail or commercial delivery service, such as UPS or FedEx.<sup>5</sup> However, a document submitted by those means is not considered "filed" until the Headquarters Hearing Clerk physically receives it, as reflected by the date stamp applied to the document by the Headquarters Hearing Clerk, and the Tribunal's ability to receive filings and correspondence by U.S. mail and commercial deliveries on a daily basis is limited. Thus, timely receipt and filing of a document submitted by U.S. mail or commercial delivery service is not assured.

If a party nevertheless opts to file by U.S. mail or commercial delivery service, the party shall notify the Headquarters Hearing Clerk *every time* it files a document in such a manner by calling the Headquarters Hearing Clerk at (202) 564-6281. To file a document using U.S. mail or commercial delivery service, the document shall be sent to the following address:

Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Attn: Mary Angeles, Headquarters Hearing Clerk  
Mail Code 1900R, WJC East Mailroom 1309  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Regardless of the method of filing, all filed documents must be signed in accordance with 40 C.F.R. § 22.5(c) and must contain the contact name, telephone number, mailing address, and email address of the filing party or its authorized representative.

A copy of each document filed in this proceeding shall also be "served" by the filing party on the presiding judge and on all other parties. 40 C.F.R. § 22.5(b). While the Rules of Practice allow for documents to be served by various means, 40 C.F.R. § 22.5(b)(2), this Tribunal strongly encourages parties to serve all documents on opposing parties by email only, *see* Revised Order Urging Electronic Filing and Service.<sup>6</sup> Documents filed electronically

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<sup>5</sup> On the other hand, this Tribunal is not able to accept filings or correspondence by personal delivery due to the physical office of the Tribunal not being accessible to the public on a daily basis.

<sup>6</sup> The Rules of Practice authorize electronic service with the written consent of the party being served. 40 C.F.R. § 22.5(b)(2). However, the Rules of Practice also provide that this Tribunal may by order authorize service by email subject to any appropriate conditions and limitations. *Id.* Pursuant to that authority, this Tribunal authorizes parties to utilize email to fulfill their service obligations without first obtaining the written consent of the party being served. *See* Revised Order Urging Electronic Filing and Service.

through the OALJ E-Filing System are deemed to have also been served electronically on the presiding judge. To serve a document on the presiding judge by U.S. mail or commercial delivery service, the address listed above shall be used. Service will be considered complete upon electronic transmission, upon mailing, or when placed in the custody of a commercial delivery service. 40 C.F.R. § 22.7(c). Additionally, all orders and documents issued by this Tribunal will henceforth be served on the parties by electronic means only. *See Revised Order Urging Electronic Filing and Service.* If a party's email address on record changes during the proceeding, the party shall promptly file and serve a notice informing this Tribunal and all opposing parties of the change.<sup>7</sup>

Every filed document must show how and when the document was filed with the Headquarters Hearing Clerk and how and when the document was served on the presiding judge and each other party. This showing may be made through a written statement or Certificate of Service, an example of which is attached to this Order. 40 C.F.R. § 22.5(a)(3).

*The parties are advised NOT to include, attach, or refer to any terms of settlement offers or agreements in any document submitted to the undersigned, and no copies of Consent Agreements and Final Orders shall be submitted, or attached to any document submitted, to the undersigned except those that are fully executed and filed with the Regional Hearing Clerk.*

**Privacy Act Statement; Notice of Disclosure of Confidential and Personal Information; Waiver of Confidentiality and Consent to Public Disclosure:** All information filed with the OALJ becomes part of the official case record, which is made publicly available. Thus, the parties are hereby advised not to file any Confidential Business Information (“CBI”) or sensitive Personally Identifiable Information (“PII”) pertaining to any person. This may include information that, if disclosed to the public, would constitute an unwarranted invasion of personal privacy, such as Social Security numbers, medical records, and personal financial information.

Where filing a document containing such information is necessary, the parties are hereby advised to redact (i.e., remove or obscure) the CBI or PII present in the document filed. If the filing party wishes for the presiding judge to view and consider the CBI or PII in making a ruling or rendering a decision, the filing party *must* follow the procedures specified in the Privacy Act Statement & Notice of Disclosure of Confidential and Personal Information, available on the OALJ's website at [https://www.epa.gov/sites/default/files/2013-09/documents/13-06-19\\_privacyactstatement\\_noticeofdisclosure.pdf](https://www.epa.gov/sites/default/files/2013-09/documents/13-06-19_privacyactstatement_noticeofdisclosure.pdf); in 40 C.F.R. § 22.5(d)(2); and in 40 C.F.R. Part 2 in order to protect the given information against public disclosure. The OALJ E-Filing System is not equipped to accommodate or protect the privacy of CBI or sensitive PII. Thus, the filing party must not file any unredacted version of a document containing CBI or sensitive PII through the OALJ E-Filing System. Rather, the filing party must file the unredacted version of the document in accordance with the aforementioned procedures either by U.S. mail or commercial delivery service sent to the address listed above or by contacting the Headquarters Hearing Clerk at (202) 564-6281 or [angeles.mary@epa.gov](mailto:angeles.mary@epa.gov) for instructions on alternative electronic filing methods.


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<sup>7</sup> If it is impossible for a party to receive service electronically, e.g., the party does not have any access to a computer, the party shall so advise this Tribunal by contacting the Tribunal's Headquarters Hearing Clerk at (202) 564-6281. The party shall also advise all opposing parties if they are unable to receive electronic service.

*To the extent that any person fails to adhere to the aforementioned procedures, that person thereby waives any claims to confidentiality and consents to public disclosure by EPA, including posting on the Internet, of all such information.*

**Contact Information:** For any questions about this Order, the Rules, or any other procedural, scheduling, or logistical issues, you may contact Matt Barnwell, an OALJ Attorney-Advisor, at [barnwell.matt@epa.gov](mailto:barnwell.matt@epa.gov) or (202) 564-3245.

**SO ORDERED.**



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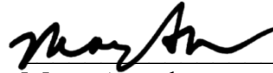
Susan L. Biro  
Chief Administrative Law Judge

Dated: July 13, 2023  
Washington, D.C.

In the Matter of *Ro Cher Enterprises, Inc., d/b/a Door and Window Warehouse Outlet, Inc.; Door and Window Warehouse, Co.; and/or Door and Window Superstore*, Respondent.  
Docket No. TSCA-05-2023-0004

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **Order for Respondent to File Answer**, dated July 13, 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:  
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](https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf)

Copy by Regular and Electronic Mail to:  
Nora Wells  
Andrew Futerman  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Mail Code C-14J  
Chicago, IL 60604  
Email: [wells.nora@epa.gov](mailto:wells.nora@epa.gov)  
Email: [futerman.andrew@epa.gov](mailto:futerman.andrew@epa.gov)  
*Counsel for Complainant*

Roger P. Janakus  
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1740 Ogden Avenue  
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Email: [roger@windowstore.net](mailto:roger@windowstore.net)  
*For Respondent*

Dated: July 13, 2023  
Washington, D.C.