



(Slip Opinion)

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**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

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In re Charles Bridge, LLC)
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Docket No. TSCA-01-2022-0027) TSCA Appeal No. 23-03
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_____)

Decided October 3, 2023

***ORDER EXERCISING SUA SPONTE REVIEW AND REMANDING TO
PRESIDING OFFICER FOR FURTHER PROCEEDINGS***

***Before Environmental Appeals Judges Aaron P. Avila, Mary Kay
Lynch, and Kathie A. Stein.***

IN RE CHARLES BRIDGE, LLC

TSCA Appeal No. 23-03

***ORDER EXERCISING SUA SPONTE REVIEW AND
REMANDING TO PRESIDING OFFICER FOR FURTHER
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Syllabus

This case arises from an administrative complaint filed by the U.S. EPA Region 1 (“Region”) against Respondent Charles Bridge, LLC for alleged violations of section 409 of the Toxic Substances Control Act, 15 U.S.C. § 2689, and the regulations promulgated thereunder. Following Respondent’s failure to file an answer to the complaint, the Region filed a motion for default on liability and the assessment of a penalty of \$56,109. On August 23, 2023, the Regional Judicial Officer (“RJO”) (the Presiding Officer in this matter) issued an Initial Decision and Default Order (collectively, “Default Order”) that found Respondent in default for failing to file an answer to the Complaint filed by the Region. The Default Order found Respondent liable on all counts alleged in the Complaint and assessed the requested \$56,109 penalty. Upon examination of the Default Order and the administrative record, the Environmental Appeals Board, (“Board”) elected to exercise its sua sponte review authority under 40 C.F.R §§ 22.27(c)(4), .30(b) because the Region failed to demonstrate and the RJO overlooked discrepancies in the record and failed to confirm that Respondent was properly served; and because there appear to be two different certificates of service for the Default Order.

Held: The Board remands this matter to the RJO to undertake further proceedings to ascertain and confirm in the record that Respondent was properly served, and upon conclusion of the proceedings issue a new Initial Decision; and to identify the correct certificate of service for the Default Order and correct the administrative record.

***Before Environmental Appeals Judges Aaron P. Avila, Mary Kay Lynch,
and Kathie A. Stein.***

Opinion of the Board by Judge Lynch:

The Regional Judicial Officer (“RJO”) (the Presiding Officer in this matter) for the U.S. Environmental Protection Agency, Region 1 (“Region”) issued an Initial Decision and Default Order (collectively, “Default Order”) in this matter on August 23, 2023. *See In re Charles Bridge, LLC*, Docket No. TSCA-01-2022-0027, at 19 (RJO Aug. 23, 2023) (Initial Decision and Default Order). The Default Order found Charles Bridge, LLC (“Respondent”) in default for failing to file an answer to the Complaint filed by the Region for alleged violations of section 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2689, and the regulations promulgated thereunder. Default Order at 3-6, 15-17. The Default Order found Respondent liable on all counts alleged in the Complaint and assessed a \$56,109 penalty. *Id.*

The Environmental Appeals Board (“Board”) has preliminarily examined the Default Order and is exercising its authority to review the matter sua sponte, pursuant to 40 C.F.R. §§ 22.27(c)(4), .30(b).¹ Before the Board will enter a finding of default, the Agency must demonstrate that the respondent was properly served with the complaint. *In re Jonway Motorcycle (USA) Co.*, CAA Appeal No. 14-03, at 5 (EAB Nov. 14, 2014) (Default Order and Final Decision); *see* 40 C.F.R. § 22.15(a) (requiring an answer be filed “within 30 days after *service* of the complaint” (emphasis added)). This Order constitutes notice of the Board’s intent to review the Default Order on three service issues: (i) whether the Region demonstrated, and the RJO confirmed, that the Complaint was sent to an appropriate address; (ii) whether service of the Motion for Default Order and Memorandum in Support of Motion for Default Order complies with the Consolidated Rules of Practice (“CROP”), under 40 C.F.R. part 22, and the Region’s Standing Order regarding electronic service, Region 1, U.S. EPA, *Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents* (June 19, 2020) (“Standing Order”); (iii) whether service of the Default Order was made on August 23, 2023, or August 24, 2023.

As to the first issue, the RJO concluded that the Region properly served Respondent with the complaint stating that “[t]he Complaint was sent by express mail hand-delivery via United Parcel Service of America, Inc., to Respondent’s attorney, Nolan H. Tanous, Esq., on or about February 22, 2022.” Default Order at 3 (footnote omitted). But the RJO concluded this without addressing the relevance,

¹ Under the regulations governing the assessment of civil penalties, 40 C.F.R. pt. 22, the Board has 45 days after service of an initial decision to exercise sua sponte review. 40 C.F.R. §§ 22.27(c)(4), .30(b).

The Board has determined that briefing by the parties would not materially assist the Board’s deliberations. *See* 40 C.F.R. § 22.30(b), (c), (f).

if any, of a June 14, 2022, email in the record from Mr. Tanous stating that he was not representing Charles Bridge, LLC in this matter, nor had he ever represented to any party that he was serving in this capacity. Email, *In re Charles Bridge, LLC*, Docket No. TSCA-01-2022-0027 (June 14, 2022), Filing No. 3. Presented with this apparent discrepancy between the statement in the Initial Decision that the Region properly served the Complaint on Respondent's attorney and Mr. Tanous' email disclaiming an attorney relationship, the Board ascertained that Mr. Tanous is listed as the registered agent for Respondent in the Maine Secretary of State records.² But the address listed in these state records is different than that used for service in this matter. Further, the RJO concluded that service was proper without confirming that the mailing address for service of the Complaint was an appropriate address. As the Board stated in *Peace Industry Group*, "[i]n future matters where the Agency moves for default against a respondent, the Board expects the Agency to demonstrate and the ALJ to confirm that any mailing was sent to an appropriate address." *In re Peace Industry Group*, 17 E.A.D. 348, 366 n.13 (EAB 2016). Neither the Region, nor the RJO, carried out these responsibilities in this matter.

The CROP requires that the complainant serve the complaint on respondent or a representative authorized to receive service on respondent's behalf. See 40 C.F.R. § 22.5(b)(1)(i), (ii), (iii). Service may be accomplished, among other methods, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery. 40 C.F.R. § 22.5(b)(1)(i). Part 22 further provides that "[s]ervice of the complaint is complete when the return receipt is signed." 40 C.F.R. § 22.7(c). And while the Board generally expects EPA to serve complaints on respondents or their authorized agent at the official address of record designated for service, we have upheld service at another address and noted that there is nothing in the rules that prevents EPA from serving their designated agent at an address where the agent can be found. *Jonway Motorcycle*, CAA Appeal No. 14-03, at 8 n.13; *Peace Industry Group*, 17 E.A.D. at 366 n.13. While service on Respondent's registered agent in this matter may well have been proper, the Region needs to explain the use of the alternate address in order to demonstrate proper service. Upon remand, the RJO must undertake further proceedings to confirm that the Region demonstrates in the record proper service of the Complaint in this case. If the RJO finds that service

² Mr. Tanous' status as the Registered Agent of Charles Bridge, LLC is not in the record of this proceeding, but it is a public record of which the Board can take official notice. See *In re Peace Industry Group*, 17 E.A.D. 348, 366 n.13 (EAB 2016).

was not proper, the RJO should direct the Region to correct service of the Complaint and other filings and demonstrate proper service in the record.

With respect to the second service issue, the Region must demonstrate and the RJO must confirm that service of the Motion for Default Order and Memorandum in Support of Motion for Default Order complies with the CROP and the Region's Standing Order regarding electronic service of documents. The Motion for Default Order was served via email to the Respondent Brian Lowry of Charles Bridge, LLC and the Registered Agent, Mr. Tanous. Motion for Default Order at 3, *In re Charles Bridge, LLC*, Docket No. TSCA-01-2022-0027 (June 13, 2022), Filing No. 2. Service of documents like the Motion for Default Order may be served by electronic means such as email if service by those means is "consented to in writing." 40 C.F.R. § 22.5(b)(2). The Region also has a standing order that authorizes electronic service "provided the other party has consented to electronic service in writing." Standing Order at 4. Such consent must be filed with the Regional Hearing Clerk. *Id.* However, there appears to be no indication in the record that consent to electronic service was obtained from Charles Bridge, LLC or any person affiliated with Charles Bridge, LLC. Nor does there appear to be any record of actual mailing of the Motion for Default Order and Memorandum in Support of Motion for Default Order. In an email from the Regional Enforcement Counsel that appears to transmit the Motion for Default Order and Memorandum in Support of Motion for Default Order to the Regional Hearing Clerk and appears to copy the parties, the Regional Enforcement Counsel states: "Also, I am copying Respondent and the legal counsel for Respondent on this e-mail. A hard copy will be mailed as well." Email, *In re Charles Bridge, LLC*, Docket No. TSCA-01-2022-0027 (June 14, 2022), Filing No. 3. Nothing in the record demonstrates service by mail of these documents. Because the record does not appear to include consent to electronic service or proof of mailing of the Motion for Default Order and Memorandum in Support of Motion for Default Order, on remand the RJO must confirm that service of the Motion for Default Order and Memorandum in Support of Motion for Default Order via email complies with the CROP and the Region's Standing Order on electronic service and that proper service is demonstrated in the record. If the RJO concludes that service was inadequate, the RJO should direct the Region to correct any service errors and demonstrate proper service in the record.

With respect to the third issue, the Certificate of Service in Docket No. TSCA-01-2022-0027 indicates the Default Order "was served" via email on Aug. 23, 2023. *In re Charles Bridge, LLC*, Docket No. TSCA-01-2022-0027 (Aug. 23, 2023), Filing No. 4.01. However, the Index for Docket No. TSCA-01-2022-0027 lists the date of service as Aug. 24, 2023. *Id.* Further, the Board received the

Default Order by email from the Regional Hearing Clerk in this matter on August 24, 2023, with a Certificate of Service dated August 24, 2023.³ It appears that there are two different certificates of service with two different dates. This appears to be a serious discrepancy that creates ambiguity as to the deadlines for any party to appeal and for the Board to exercise its authority to review. The Board addressed a similar discrepancy in service dates for an Initial Decision and Default Order in another Region 1 matter — the *Build-It Bros.* matter. *In re Build-It Bros., L.L.C.*, TSCA Appeal No. 20-(06), at 2 (EAB Jan. 21, 2021) (Order Directing Re-Service of Initial Decision and Default Order). On remand, the RJO must explain this discrepancy, identify when the Default Order in this matter was served, and correct the administrative record for the Default Order.

In conclusion, the RJO should conduct additional proceedings consistent with this Order, and upon conclusion of the proceedings issue a new Initial Decision.

So ordered.

³ The Board notes that both certificates of service for the Default Order include an outdated physical address for the Board. Additionally, the Certificate of Service received by the Board on August 24, 2023, includes an email address for someone who is no longer Assistant Administrator for Enforcement and Compliance Assurance. On remand, the RJO should use current information.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Exercising Sua Sponte Review and Remanding to Presiding Officer for Further Proceedings* in the matter of Charles Bridge, LLC, TSCA Appeal No. 23-03, were sent to the following persons in the manners indicated:

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Dated: Oct 03, 2023



Emilio Cortes
Clerk of the Board