

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

Received by
EPA Region 7
Hearing Clerk

IN THE MATTER OF)
)
The Askins Development)
Group, LLC,)
)
)
Respondent.)
_____)

Docket No. TSCA-07-2019-0280

SCHEDULING ORDER

On May 14, 2021, Complainant filed a Status Report in this matter detailing Complainant’s efforts to explain to Respondent the information needed to process Respondent’s ability to pay claim, including Respondent’s federal tax filings for the past three (3) years, including all schedules and attachments and a completed ability to pay (ATP) form which Complainant provided to Respondent. Complainant states that on May 12, 2021, Respondent’s counsel provided what appears to be Respondent’s federal tax filings for 2016, 2017, and 2018, together with other financial documentation and Complainant has begun to review the documents to determine if they are complete. Additionally, Complainant states that on May 12, 2021, Complainant emailed Respondent’s counsel a reminder that Complainant could not complete the ability to pay claim analysis without the completed ATP form and asked Respondent’s counsel for a date certain when the completed ATP form would be provided to Complainant. As of the date of Complainant’s Status Report, Complainant states that Respondent has neither provided the completed ATP form nor given a date when the completed ATP form will be provided.

On September 8, 2021, Complainant filed a Second Status Report. In the Second Status Report, Complainant states that on May 19, 2021, Complainant provided Respondent’s tax returns and other financial documentation to the EPA Region 7 finance department, which advised that the documents were insufficient to complete the ATP analysis. Complainant states that on May 21, 2021, Complainant emailed Respondent’s counsel, stating that the Agency had questions about Respondent’s tax returns and the financial information provided. Complainant’s counsel missed a call from Respondent’s counsel on May 25, 2021. On May 27, 2021, Complainant again emailed Respondent’s counsel, stating that the Agency had questions about Respondent’s tax returns and the financial information provided, and also called Respondent’s counsel, leaving a voicemail. On June 21, 2021, Respondent’s counsel emailed Complainant the ATP form, which was largely incomplete, or referred back to the financial information previously provided, about which the Agency has questions. On June 24, 2021, Complainant provided Respondent’s ATP form to the EPA finance department, which advised that the ATP form was incomplete and that Respondent, despite stating in the ATP form that it had provided asset and liability information (balance sheet), instead had only provided purported income and expenses. Also on June 24, 2021, Complainant emailed Respondent’s counsel again stating that

the Agency had questions about Respondent's tax returns and the financial information provided. Respondent's counsel emailed Complainant stating he was out of town and asked Complainant to email the tax questions so they could be forwarded to Respondent's tax preparer. On June 25, 2021, Complainant emailed Respondent's counsel a series of preliminary questions related to Respondent's tax returns and the financial information provided. On July 13, 2021, Respondent's counsel emailed Complainant stating that, due to a private matter, he would be unable to address the questions contained in Complainant's June 25 email for at least a "week to two weeks." As of the date of Complainant's Second Status Report, Complainant states Respondent has yet to provide any substantive response to Complainant's preliminary questions about Respondent's tax returns or financial information, nor has Respondent provided a complete ATP form. Complainant also states it has been trying to assess Respondent's ability to pay in this matter since November 30, 2018 and without further information regarding Respondent's financial condition, Complainant remains unable to properly evaluate Respondent's ability to pay the penalty sought.

On November 12, 2021, Complainant and Respondent filed a Joint Status Report. In the Joint Status Report, the parties state that following a conference call held with the parties on October 19, 2021, the parties' attorneys spoke by telephone and Complainant's counsel agreed to send Respondent's counsel an email outlining the information needed by Complainant. On October 29, 2021, Complainant's counsel sent Respondent's counsel an email with an attachment containing a full list of EPA's initial questions, which included some questions that were originally sent by email to Respondent's counsel on June 25, 2021. On November 5, 2021, Respondent's counsel provided responses to four of EPA's initial questions, which the Agency is currently reviewing. Respondent's counsel further advised that he sent EPA's initial questions to Respondent. As of the date of the Joint Status Report, Respondent has not provided responses to the vast majority of EPA's questions, nor a date by which the answers will be provided to Complainant. Lastly, the Joint Status Report states that Complainant has been trying to assess Respondent's ability to pay in this matter since November 30, 2018 and without further information regarding Respondent's financial condition, Complainant remains unable to properly evaluate Respondent's ability to pay the penalty sought.

EPA Policy strongly supports settlement and the procedures regarding settlement are set forth in 40 C.F.R. § 22.18. Each party is reminded that pursuing this matter will require the expenditure of significant amounts of time and financial resources. The parties should realistically consider the risk of not prevailing in the proceeding despite such expenditures. A settlement allows the parties to control the outcome of the case, whereas a judicial decision takes such control away.

In order to move this matter forward, the following schedule is **ORDERED**, taking into account the upcoming holidays:

December 13, 2021 – To the extent it has not already done so, Complainant shall provide to Respondent a complete list of the documents, information, and questions necessary to conduct an ability to pay analysis.

February 11, 2022 – Respondent shall submit all documents, information and responses to Complainant, including complete responses to Complainant's questions set forth in the June 25, 2021 and October 29, 2021 emails, in support of an inability to pay claim if Respondent intends to make such a claim for purposes of settlement. The information

shall be submitted to Complainant *only*. Please do *not* send any submittals to the undersigned or the Regional Hearing Clerk.

February 25, 2022 – Complainant and Respondent shall confer and jointly file a status report. The status report shall include a date by which the Agency anticipates making a determination on any ability to pay claim.

Failure by a party to comply with this Order may result in that party being found in default. *See* 40 C.F.R. § 22.17(a).

SO ORDERED.

Karina Borromeo
Regional Judicial Officer/Presiding Officer