

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I**

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IN THE MATTER OF )	
City Auto Parts, Incorporated, )	Docket No. CAA-01-2020-0018
Connecticut Scrap, L.L.C., )	Docket No. CAA-01-2020-0019
Exeter Scrap Metal, LLC., )	Docket No. CAA-01-2020-0021
Nichols Auto Parts, Inc., )	Docket No. CAA-01-2020-0022
Ross Recycling, Inc., and )	Docket No. CAA-01-2020-0023
Yerrington’s Auto Salvage, Inc. )	Docket No. CAA-01-2020-0039
)	
Respondents )	
)	
Proceeding under Section 113 of the )	<b>FIFTH JOINT MOTION TO</b>
Clean Air Act )	<b>EXTEND TIME TO FILE</b>
)	<b>ANSWERS TO COMPLAINTS</b>
_____ )	

**BACKGROUND OF MOTION TO EXTEND**

1. On December 19, 2019, the United States Environmental Protection Agency – Region 1 (“EPA” or “Complainant”) filed separate Administrative Complaints and Notices of Opportunity for a Hearing against City Auto Parts, Incorporated; Connecticut Scrap, L.L.C.; Nichols Auto Parts, Inc.; Ross Recycling, Inc.; and Yerrington’s Auto Salvage, Inc. and on February 6, 2020, the EPA filed a separate Administrative Complaint and Notice of Opportunity for a Hearing against Exeter Scrap Metal, L.L.C.<sup>1</sup>(collectively the “Respondents”).
2. On January 16, 2020, the parties submitted a Joint Motion to Extend Time to File Answers to Complaints. The motion was granted by the Regional Judicial Office on January 21, 2020. The motion granted a 45-day extension to file answers to the Complaints.

<sup>1</sup> The EPA had originally filed a Complaint against Exeter Scrap Metal, Inc. on December 19, 2019 (CAA-01-2020-0020) and withdrew the action without prejudice on January 16, 2020. The EPA filed a new Complaint against Exeter Scrap Metal, L.L.C. (CAA-01-2020-0039), and Respondent agreed to accept service.

3. On March 2, 2020, the parties filed a Second Joint Motion to Extend Time to File Answers to Complaints. The Motion was granted by the Regional Judicial Office on March 2, 2020. The Motion granted a 45-day extension to April 20, 2020 to file answers to the Complaints.

4. As the basis for the prior motions, Counsel for Respondents represented to EPA that the penalties proposed in the Complaints would have serious adverse economic impacts on the Respondents' businesses. Since that time, Counsel and Respondents have continued to provide a documentation to that effect that is consistent with EPA's *Guidance on Evaluating a Violator's Ability to Pay a Civil Penalty in an Administrative Enforcement Action*, dated June 29, 2015, other relevant EPA guidance, and direction from EPA's regional financial analyst.

5. On January 24, 2020, Counsel for Respondents provided EPA with a robust submittal, including copies of entity by-laws, balance sheets, depreciation schedules, tax returns and working and capital and cash flow information.

6. On January 28, 2020, EPA's regional financial analyst, Mary Medeiros, requested additional documentation.

7. On January 29, 2020, Counsel for Respondents provided the additional documentation requested by EPA.

8. On February 4, 2020, the parties had a conference call to discuss the financial analyst review process. Copies of additional tax records were requested, and Counsel for Respondents delivered same to EPA via overnight mail for receipt on February 5, 2020.

9. Respondents have provided full cooperation with providing documentation. Ms. Medeiros requested to have a conference call with Respondents' Controller. They had such

conference call on February 13, 2020.

10. On February 13, 2020, Ms. Medeiros sent an e-mail to Mr. Paul Rak (Controller for Respondents) summarizing the additional documentation she was requesting to support Respondents' ability to pay claim. The request included eight items seeking copies of loan notes for equipment, account receivable lines of credit, terms notes for equipment, loan covenant calculations for the last two quarters, spreadsheets detailing outstanding loans for each entity and specific correspondence from lenders.

11. On March 5, 2020, the Respondents provided Ms. Medeiros with a robust package of information to support their ability to pay claim. Ms. Medeiros reviewed the package and contacted Mr. Rak on March 31<sup>st</sup> to confirm if he was available to discuss the information. He responded that day to let her know that he was working and could speak with her.

12. On April 13, 2020, the parties filed a Third Joint Motion to Extend Time to File Answers to Complaints. The Motion was granted by the Regional Judicial Office on April 16, 2020. The Motion granted a 60-day extension to June 19, 2020 to file answers to the Complaints.

13. Since April 13, 2020, Respondents have been fully cooperating and addressing several questions from Ms. Medeiros.

14. On May 19, 2020, Ms. Medeiros issued another set of information requests. Mr. Rak has been diligently working on the responses. Mr. Rak provided the requested information on May 28, 2020 (including voluminous financial documents and records). It is important to note that during this period the Respondents' computer server was hacked by Ransom Software and it took time to restore the data.

15. On June 18, 2020, the parties submitted the Fourth Joint Motion to Extend the time to file answers to the Complaints. The request was based on the parties' continued exchange of new information and evaluation of the same with regard to the ability to pay analysis. The Motion was granted on June 22, 2020 and extended the time to file answers to August 3, 2020.

16. On June 22, 2020, the Respondents provided voluminous documentation in response to Ms. Medeiros' requests. Ms. Medeiros completed her review and provided a summary of her analysis to the Respondents on July 9, 2020.

17. The Respondents prepared a detailed reply with specific clarification of various issues and conclusions. The reply was provided to EPA on July 24, 2020 (Ms. Medeiros was on vacation and did not return to the office until July 27, 2020). EPA responded on July 30, 2020.

18. Since July 27, 2020, counsel for EPA and the Respondents have engaged in serious discussions which culminated with a good faith cash offer to settlement from the Respondents on July 31, 2020.

19. The EPA internal team is reviewing the offer and also considering scheduling a meeting between Ms. Medeiros and Mr. Rak during the week of August 3, 2020 to discuss some points raised in the Respondents' reply to assist with achieving a viable settlement.

20. Respondents believe that further litigating this matter by answering the Complaints without receiving the fully vetted recommendation from Ms. Medeiros regarding the economic impacts of the proposed penalties would not be an efficient use of resources or in the public interest.

21. EPA concurs that further time is appropriate for Respondents and EPA to evaluate and discuss the Respondents' Ability to Pay claim. If EPA is satisfied with the information and

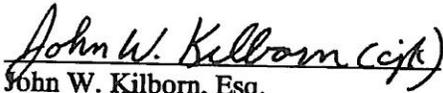
documentation Respondents have provided (and will continue to provide depending on Ms. Medeiros' evaluation), then a resolution of this case may be possible without litigation.

**JOINT MOTION TO EXTEND TIME TO FILE ANSWERS**

22. For the reasons stated above, and pursuant to Section 22.16 of the Consolidated Rules of Practice, both Respondents and EPA respectfully move and request that you extend the time for the Respondents to file an Answer for an additional 30 days, that is, to Wednesday, September 2, 2020.



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In re: City Auto Parts, Inc./EPA Docket No. CAA-01-2020-0018  
Connecticut Scrap, LLC/EPA Docket No. CAA-01-2020-0019  
Exeter Scrap Metal, LLC/EPA Docket No. CAA-01-2020-39  
Nichols Auto Parts, Inc. /EPA Docket No. CAA-01-2020-0021  
Ross Recycling, Inc. /EPA Docket No. CAA-01-2020-0022  
Yerrington's Auto Salvage, Inc. /EPA Docket No. CAA-01-2020-0023

### CERTIFICATE OF SERVICE

I hereby certify that a *Joint Motion to Extend Time to File Answers to Complaints* ("Motion") has been sent to the following persons on the date and in the manner noted below:

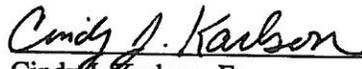
Original and one copy,  
Via Electronic Mail:

Ms. Wanda Santiago, Regional Hearing Clerk  
U.S. EPA, Region I  
5 Post Office Square, Suite 100  
Boston, MA 02109-3812

Copy, by email

John W. Kilborn, Esq.

Date: 7/31/20

  
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