

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	Docket No. TSCA-10-2021-0006
GREENBUILD DESIGN & CONSTRUCTION, LLC)	
)	COMPLAINANT’S MOTION TO SET A BRIEFING SCHEDULE
Anchorage, Alaska)	
)	
Respondent.)	
_____)	

COMPLAINANT’S MOTION TO SET A BRIEFING SCHEDULE

COMES NOW, the U.S. Environmental Protection Agency, Region 10 (“Complainant”), to respectfully request this Tribunal set an Accelerated Decision briefing schedule in this matter. This Tribunal’s March 2, 2021 Order provides that dispositive motions regarding liability must be filed within 30 days after the due date for Complainant’s Rebuttal Prehearing Exchange. March 2, 2021 Order at 2. Complainant’s Rebuttal Prehearing Exchange is due on May 24, 2021, which would set the deadline for dispositive motions as June 23, 2021. *Id.*

Complainant intends to submit a motion for accelerated decision on June 23, 2021. 40 C.F.R. § 22.16(b) provides that a “party’s response to any written motion must be filed within 15 days after service of such motion.” That would indicate that Respondent’s response to Complainant’s motion for accelerated decision would be due on July 8, 2021. But, 40 C.F.R. § 22.16(b) also provides that “[t]he Presiding Officer...may set a shorter or longer time for response or reply, or make other orders concerning the disposition of motions.”

Therefore, Complainant wishes to respectfully propose the following briefing schedule associated with its forthcoming motion for accelerated decision:

- June 23, 2021** Complainant’s motion for accelerated decision
- July 23, 2021** Respondent’s response to Complainant’s motion for accelerated decision

August 6, 2021 Complainant's reply to Respondent's response

Complainant believes that this briefing schedule is necessary for three main reasons. First, as this Tribunal knows, Respondent is appearing *pro se*. As such, Complainant believes that it is reasonable to afford Respondent additional time to respond to Complainant's motion for accelerated decision than would be expected of a represented party.

Second, Respondent has repeatedly failed to comply with the deadlines set forth by this Tribunal.¹ This has put Complainant in the difficult position of having to decide how much assistance is appropriate for it to provide Respondent and how to properly respond to Respondent's failure to file required documentation. This briefing schedule would put Respondent on notice that it has a mandatory deadline on a certain date, and the failure to comply with that deadline may have serious consequences. *See* 40 C.F.R. § 22.16(b) ("Any party who fails to respond within the designated period waives any objection to the granting of the motion.").

And third, Respondent has made it clear that its co-owner, Mr. Rodrigo von Marees, has difficulty understanding written English. Therefore, by providing Respondent additional time to reply to Complainant's motion for accelerated decision, Complainant believes that Respondent's co-owner, Mrs. Kari Ann von Marees—who is fluent in written English—will be able to ensure that Mr. von Marees fully understands the substance of Complainant's motion.

Complainant also notes that its lead counsel for this matter has an unchangeable, previously schedule commitment which will take him out of the office at such a time as to make replying to Respondent's July 8 response difficult to accomplish.

¹ For example, Respondent has not submitted its Preliminary Statement as required by this Tribunal's February 3 and March 2, 2021 Prehearing Orders; filed its Prehearing Exchange on May 17, 2021, a week after its May 10, 2021 deadline; and did not serve its Prehearing Exchange on Complainant until May 20, 2021.

Pursuant to this Tribunal's February 3, 2021 Prehearing Order, Complainant contacted Respondent regarding this motion on Wednesday, May 19, Thursday, May 20, and Monday, May 24, 2021. *See, e.g.*, Attachment 1. But, as of this filing, Respondent has not responded to Complainant.

Respectfully submitted,

Andrew Futerman
Counsel for Complainant
EPA Region 10

In the Matter of *GreenBuild Design & Construction, LLC*, Respondent.
Docket No. TSCA-10-2021-0006

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Complainant's Motion to Set a Briefing Schedule**, dated May 24, 2021 was served on the following parties in manner indicated below:

Original by OALJ E-Filing System to:
Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1200 Pennsylvania Avenue, NW
Washington DC 20004

Copy by Regular and Electronic Mail to:
Mr. and Mrs. Rodrigo and Kari von Marees
rad@greenbuild.us.com
kad@greenbuild.us.com
For Respondent

Dated: May 24, 2021
Seattle, Washington

Respectfully submitted,

Andrew Futerman
Counsel for Complainant
EPA Region 10