

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

IN THE MATTER OF:

HOMECA RECYCLING CENTER CO., INC.

Respondent

Proceeding under Section 113(d) of the Clean  
Air Act, 42 U.S.C. § 7413(d)

Docket No. CAA-02-2024-1201

MOTION FOR LEAVE TO CORRECT  
TYPOGRAPHICAL ERRORS IN THE  
COMPLAINT

**COMPLAINANT'S MOTION FOR LEAVE TO CORRECT TYPOGRAPHICAL  
ERRORS IN THE COMPLAINT**

COMES NOW, the United States Environmental Protection Agency (“EPA” or “Complainant”), pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Part 22”), 40 C.F.R. § 22.16(a), and submits this motion for leave from the Tribunal to correct two (2) minor, non-substantive typographical errors in the Complaint. Complainant sought the consent of Respondent to the proposed corrections prior to filing the instant motion. Respondent does not oppose the proposed corrections, an agreement memorialized in the attached Stipulation of Settlement, and has consented to the relief sought herein.

1. The Complaint in this matter, dated October 19, 2023, alleges that Homeca Recycling Center Co., Inc (“Respondent”) violated Sections 112 and 113 of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7412 and 7413, and the National Emission Standard for Asbestos, 40 C.F.R. Part 61, Subpart M (the “Asbestos NESHAP”).

2. The Complaint proposes a civil penalty of \$187,487 for Respondent's failure to: (1) adequately wet the regulated asbestos-containing material, including material that has been stripped, to ensure that it remains wet until collection for disposal; (2) after wetting, seal all asbestos containing waste material ("ACWM") in leak tight containers while wet; (3) label the bags or wrap materials containing ACWM with the name of the waste generator and the location at which the waste was generated; (4) deposit all ACWM as soon as is practical at a waste disposal site; and (5) remove all ACWM from the ground and the concrete surface areas as required by Phase III of the Work Plan referenced in the Compliance Order (CAA-02-2020-1003).
3. Respondent filed an Answer with EPA's Regional Hearing Clerk on December 4, 2023.
4. Complainant filed its prehearing exchange submittal on March 1, 2024. The submittal identified the two (2) typographical errors in the Complaint. Prior to the filing of its prehearing exchange, Complainant contacted Respondent regarding the proposed corrections, informing Respondent of Complainant's intent to note the errors in its prehearing exchange, seeking Respondent's consent to the proposed corrections, and notifying Respondent of its intent to seek leave of the Tribunal to correct the errors. On March 7, 2024, the parties executed that enclosed stipulation memorializing the proposed corrections to the Complaint.
5. Notably, Complainant is only seeking to make two (2) minor, non-substantive, corrections to typographical errors in the Complaint.
6. First, in paragraph 66, Complainant proposes that the reference to 40 C.F.R § 61.145(c)(6) be corrected to read 40 C.F.R. § 61.145(c)(3).
7. Second, at paragraph 77, Complainant proposes that the reference to 40 C.F.R. § 61.150(a)(1)(iv) be corrected to read 40 C.F.R. § 61.150(a)(1)(v).

8. Pursuant to 40 C.F.R. § 22.4(c), “[t]he Presiding Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay.”
9. In accomplishing this, Part 22 affords a Presiding Officer broad discretion in resolving issues that may arise during the pendency of a proceeding. *See* 40 C.F.R. § 22.4(c)(2) (providing that the Presiding Officer may “[r]ule upon motions, requests, and offer of proof, and issues all necessary orders”); *see also* 40 C.F.R. § 22.4(c)(10) (noting that the Presiding Officer may “[d]o all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these Consolidated Rules of Practice”). Furthermore, Part 22 provides an additional reservoir of authority to a Presiding Officer to address questions falling outside the express provisions of its rules. *See e.g.*, 40 C.F.R. 22.1(c) (specifying that “[q]uestions arising at any stage of the proceeding which are not addressed in these Consolidated Rules of Practice shall be resolved at the discretion of the Administrator, Environmental Appeals Board, Regional Administrator, or Presiding Office, as provided in these Consolidated Rules of Practice”).
10. As noted above, Complainant is merely seeking to correct two (2) typographical errors in its Complaint. Complainant sought the consent of Respondent to the corrections prior to the filing the instant motion. Respondent agreed to Complainant’s proposed changes, as memorialized in the enclosed Stipulation of Settlement dated March 7, 2024.
11. The existence of an executed Stipulation of Settlement between parties fully supports Complainant’s request for the relief sought herein while also helping streamline judicial economy. *See e.g.*, *Caban Hernandez v. Philip Morris USA, Inc.*, 486 F.3d 1, 5 (1st Cir. 2007) (providing that “[s]tipulations ‘eliminate the need for proving essentially uncontested facts,’ thus husbanding scarce judicial resources resources.”); *Gonzalez v. United States Postal*

*Serv.*, 2022 WL 2819418, at \*3 (D.P.R. July 19, 2022) (providing that “nothing impedes the parties, in the interest of efficiency, from making stipulations concerning facts about which the parties were in agreement . . . ”); *United States v. Four Units All Terrain Vehicles*, 778 F. Supp. 2d 220, 222 (D.P.R. 2011) (noting that factual stipulations have the effect of withdrawing a fact from issue).

12. Here, there is no dispute as to Complainant’s clear typographical errors in the Complaint nor as to the simple citation corrections proposed by Complainant and agreed to by Respondent to resolve those errors.
13. Further, granting this motion seeking leave to correct the non-substantive typographical errors will not cause prejudice to Respondent, as self-evidently attested to by Respondent having executed the Stipulation of Settlement. Importantly, the Complainant does not seek to add additional violation counts or to modify the proposed penalty, nor does it seek to add a party or to add (or delete) any allegation. Respondent’s potential liability is unchanged. Also, Complainant’s motion is still early in the 40 C.F.R. Part 22 hearing process. No trial date has been set, and the motion is made well before the deadline for making non-dispositive motions. Finally, as discussed above, Respondent has consented to the proposed changes sought as relief herein.
14. For the forgoing reasons, Complainant respectfully requests that this Tribunal issue an Order granting Complainant’s motion seeking leave of the Tribunal to correct the typographical errors in the Complaint, entering the attached Stipulation of Settlement memorializing the proposed changes agreed to between Complainant and Respondent, and providing that the typographical corrections cited to therein will be incorporated by reference into the Complaint to automatically take effect upon issuance of the Order.

RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of March 2024.

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STIPULATION TO CORRECT  
TYPOGRAGPHICAL ERRORS IN  
COMPLAINT

The parties hereby stipulate and agree to the correction of the following typographical errors in the Complainant's Complaint and Notice of Opportunity to Request a Hearing ("Complaint") dated October 19, 2023:

1. Paragraph 66: 40 C.F.R § 61.145(c)(6) is corrected to read 40 C.F.R. § 61.145(c)(3).
2. Paragraph 77: 40 C.F.R. § 61.150(a)(1)(iv) is corrected to read 40 C.F.R. § 61.150(a)(1)(v).
3. Other than the above provisions, all terms and provisions of the pleadings remain in full force and effect.
4. Nothing herein is to be construed to affect or limit any right available to Respondent under laws and regulations, including the provisions of 40 C.F.R. Part 22.

March 7, 2024



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