

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the matter of:

Homeca Recycling Center Co., Inc.,

Respondent.

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

CONSENT AGREEMENT
AND
FINAL ORDER

CAA-02-2024-1201

I. CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative proceeding brought under Section 113(d) of the Clean Air Act (the "CAA" or the "Act"), 42 U.S.C. § 7413(d) and Sections 22.13(a) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), as codified at 40 C.F.R. Part 22.
2. Complainant is the United States Environmental Protection Agency, Region 2 ("EPA"). On EPA's behalf, the Director of the Caribbean Environmental Protection Division ("Director") is delegated the authority to initiate and sign consent agreements for civil administrative proceedings under Section 113(d) of the CAA.
3. The Respondent is Homeca Recycling Center Co., Inc. ("Homeca" or "Respondent"). Homeca is engaged in the business of scrap metal removal, processing and export of recyclable materials, together with abatement of lead-based paint and asbestos containing materials that are typically associated with demolition projects from which scrap metals are recycled.
4. On October 20, 2023, Complainant filed a Complaint alleging that Respondent violated Sections 112 and 113 of the Act, 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"). The Complaint alleged that Respondent failed to: (1) adequately wet the regulated asbestos-containing material, including material that had been stripped, to ensure that it remained 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).

5. On December 5, 2023, Respondent filed its Answer to the Complaint denying the violations of the Act and the Asbestos NESHAP alleged in the Complaint.
6. On January 19, 2024, the Administrative Law Judge assigned to the case issued the Prehearing Order.
7. Pursuant to the Administrative Law Judge Order issued on March 15, 2024, Complainant filed an amended Complaint on March 21, 2024 ("Amended Complaint"). Consequently, Respondent filed an amended Answer to the Amended Complaint on April 10, 2024.
8. On April 26, 2024, Respondent filed its Prehearing Exchange. As part of its Prehearing Exchange, Respondent raised an ability to pay claim.
9. Upon receipt of Respondent's ability to pay claim, Complainant promptly engaged the assistance of its financial consultant in evaluating such claim.
10. On August 23, 2024, Complainant and Respondent (together, the "Parties") filed a Joint Motion for Appointment of a Neutral, which was granted by the Administrative Law Judge assigned to the case on August 26, 2024.
11. Since September 2024, the Parties have been working, with the assistance of the neutral, towards reaching an agreement dispositive of all matters, including Respondent's ability to pay claim the proposed penalty.
12. The Parties have reached an agreement. The Parties agree that settling this matter by entering into this consent agreement ("Consent Agreement" or "Agreement") and the attached final order ("Final Order" or "Order"), pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation. This Consent Agreement and Final Order ("CA/FO") is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated findings of fact or conclusions of law alleged in the Amended Complaint have been made.

B. TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), and in accordance with the provisions of 40 C.F.R. Part 22, it is hereby agreed by and between the Parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall comply with, the following terms.

13. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001. Respondent hereby certifies under penalty of law that the financial information provided to Complainant is accurate and is not misleading. Respondent

acknowledges that Complainant has relied upon such financial information in the negotiation of this settlement.

14. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
 - a. admits the jurisdictional allegations of the Amended Complaint;
 - b. neither admits nor denies specific factual allegations contained in the Amended Complaint;
 - c. consents to the assessment of a civil penalty of this CA/FO;
 - d. consents to the issuance of the attached Final Order;
 - e. consents to the issuance of any specified compliance or corrective action order, as applicable;
 - f. consents to the conditions specified in this Consent Agreement;
 - g. waives any right to contest the allegations contained in the Amended Complaint; and
 - h. waives its right to appeal the Final Order accompanying this Consent Agreement.

15. For purposes of this proceeding, Respondent:
 - a. agrees that this Consent Agreement states a claim upon which relief may be granted against Respondent;
 - b. acknowledges that this Consent Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - c. consents to the issuance of the attached Final Order;
 - d. waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Final Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
 - e. consents to personal jurisdiction in any action to enforce this Consent Agreement or Final Order, or both, in the United States District Court; and

f. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Consent Agreement or Final Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

16. By signing this Agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in Federal Court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Consent Agreement.

C. PENALTY

17. Respondent agrees to pay the civil penalty in the total amount of **thirty-five thousand dollars (\$35,000.00)** ("Assessed Penalty").

18. Based on Respondent's documented inability to pay claim, and in accordance to applicable laws, EPA conducted an analysis of Respondent's financial information and determined that the Assessed Penalty is an appropriate amount to settle this action, which Respondent consents to pay as follows:

a. The Assessed Penalty will be paid in five (5) equal installments, in order to complete payment of the entire Assessed Penalty and interest, which is assessed at the IRS standard underpayment rate of 7%. Including the Assessed Penalty and interest, the total amount that will be paid upon completion of all payments will be **\$35,571.67**. The first payment is due within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the EPA's Region 2 Hearing Clerk ("Filing Date"). Respondent's subsequent payments shall thereafter be due in 30-day intervals from said Filing Date.

b. Respondent shall make payments in accordance with the following schedule:

Payment Number	Payment shall be made no later than	Principal amount	Interest amount	Total payment amount
1	Thirty (30) days after the Filing Date	\$7,000.00	\$0.00	\$7,000.00
2	Sixty (60) days after the Filing Date	\$7,000.00	\$326.67	\$7,326.67
3	Ninety (90) days after the Filing Date	\$7,000.00	\$122.50	\$7,122.50

Payment Number	Payment shall be made no later than	Principal amount	Interest amount	Total payment amount
4	One-hundred and twenty (120) days after the Filing Date	\$7,000.00	\$81.67	\$7,081.67
5	One-hundred and fifty (150) days after the Filing Date	\$7,000.00	\$40.83	\$7,040.83
TOTAL PENALTY PAYMENT INCLUDING INTEREST				\$35,571.67

- c. Notwithstanding Respondent's agreement to pay the Assessed Penalty in accordance with the installment schedule set forth above, Respondent may pay the entire Assessed Penalty of **thirty-five thousand dollars (\$35,000.00)** within thirty (30) days of the Filing Date and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with any interest and other charges accrued up to the date of such full payment.
19. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
20. When making a payment, Respondent shall:
- a. identify the payment with Respondent's name and the docket number of this CA/FO, CAA-02-2024-1201; and
 - b. concurrently with the payment or within 24 hours of the payment, Respondent shall serve proof, via electronic mail, of such payment to the following person(s):
- Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007
maples.karen@epa.gov;

Evelyn Rivera-Ocasio, Esq.
Assistant Regional Counsel
United States Environmental Protection Agency, Region 2
Office of Regional Counsel, Caribbean Team
48 Road 165, Suite 7000
Guaynabo, PR 00968
rivera-ocasio.evelyn@epa.gov;

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

21. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Consent Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts:
 - a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Per 42 U.S.C. § 7524(c)(6), interest will be assessed pursuant to 26 U.S.C. § 6621(a)(2), that is the IRS standard underpayment rate, equal to the Federal short-term rate plus 3 percentage points.
 - b. Handling Charges. The United States’ enforcement expenses including, but not limited to, attorneys’ fees and costs of handling collection.
 - c. Late Payment Penalty. A ten percent (10%) quarterly non-payment penalty.
22. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
 - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
 - c. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
 - d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.
23. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
24. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.
25. Respondent explicitly and knowingly agrees to pay the Assessed Penalty in accordance with the terms of this CA/FO.

D. ADDITIONAL TERMS OF SETTLEMENT

26. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this CA/FO to any successors in interest prior to any transfer of ownership or control of any portion or interest in Respondent. Simultaneously with such notice, Respondent shall provide written notice of transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this CA/FO unless EPA has provided written approval of the release of said obligations or liabilities.
27. By signing this Agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

28. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.
29. By signing this Agreement, Complainant and Respondent each give their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the fully executed CA/FO, by electronic mail, to the following address: rtoro@toro-arsuaga.com. Respondent understands that this e-mail address may be made public when the CA/FO and Certificate of Service are filed and uploaded to a searchable database.
30. By signing this Agreement, both parties agree that each party's obligations under this CA/FO constitute sufficient consideration for the other party's obligations.
31. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was, upon information and belief, at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
32. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding, and specifically waives any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

E. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

33. In accordance with 40 C.F.R. § 22.18(c), compliance with the terms of this CA/FO resolves Respondent's liability under Section 113(d) of the CAA for federal civil penalties for the violations and facts specifically identified, set out, or stipulated above; it resolves no other liability.
34. This Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
35. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Administrator or other delegate.
36. Any violation of the attached Final Order may result in a civil judicial action for an injunction or civil penalties of up to \$124,426 per day per violation, or both, as provided in Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2) (as adjusted for inflation pursuant to 40 C.F.R. § 19.4), as well

as criminal sanctions as provided in Section 113(c) of the CAA, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this CA/FO in an administrative, civil judicial, or criminal action. Respondent reserves and may assert any available argument and defense, and may use any information submitted under this CA/FO, in response to any such action pursued by EPA.

37. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA and its implementing regulations, nor other federal, state, or local laws, statutes or regulations, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
38. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
39. This CA/FO and any provision herein shall not be construed as an admission in any civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with the provisions of this CA/FO.
40. The EPA reserves the right to revoke this Consent Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Consent Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. Under such circumstance, Respondent reserves the right to assert any available argument and defense to any such claim by the EPA. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

F. EFFECTIVE DATE

41. The Parties agree to issuance of the attached Final Order. Upon filing, the Complainant will transmit a copy of the filed CA/FO to the Respondent.
42. This CA/FO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

G. SIGNATURES

The foregoing Consent Agreement *In the Matter of Homeca Recycling Center Co., Inc.*, Docket No. CAA-02-2024-1201, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:



Eduardo Ramos Vera
General Manager
Homeca Recycling Center Co, Inc.
PMB-323 Luis Muñoz Ave. #20
Caguas, Puerto Rico 00725

Date: February 20, 2025

FOR COMPLAINANT:

Carmen R. Guerrero Pérez, Director
Caribbean Environmental Protection Division
United States Environmental Protection Agency, Region 2

Date:

II. FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Regional Judicial Officer of EPA Region 2, concurs in the foregoing Consent Agreement, *In the Matter of Homeca Recycling Center Co., Inc.*, CAA-02-2024-1201. This Consent Agreement, entered into by the Parties, is incorporated by reference into this Final Order, is hereby approved, ratified and issued.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.

Date:

**Helen Ferrara, Regional Judicial Officer
U.S. Environmental Protection Agency – Region 2
290 Broadway
New York, New York 10007-1866**