

**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

**JOINT MOTION FOR APPOINTMENT
OF A NEUTRAL AND TOLLING OF
TIME TO FILE DISPOSITIVE
MOTIONS**

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COMES NOW, Complainant and Homeca Recycling Center Co., Inc. (“Homeca” or “Respondent”), 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. Part 22, and respectfully submits this motion for appointment of a neutral and the tolling of time to file dispositive motions set forth in Honorable Michael B. Wright’s June 21, 2024 Order.¹

1. On April 24, 2024, Respondent submitted its Initial Prehearing Exchange (“Prehearing Exchange”).²

¹ The initial prehearing schedule, set forth in Judge Wright’s January 19, 2024 Prehearing Order, was first extended on April 9, 2024. *See* Judge Wright’s April 9, 2024 Order on the Parties’ Motions Regarding the Prehearing Schedule. Following this, the prehearing schedule was extended on May 28, 2024 and, most recently, on June 21, 2024. *See* Judge Wright’s May 28, 2024 Order on Complainant’s Unopposed Motion for Extension of Time, and June 21, 2024 Order on Respondent’s Unopposed Motion for Extension of Time. Pursuant to the June 21, 2024 Order, the deadline for filing dispositive motion was extended to October 22, 2024.

² For purposes of the instant motion, the Parties are excluding a detailed recitation of the procedural history. Only pertinent procedural facts relevant to this motion are highlighted.

2. In its Prehearing Exchange, Respondent claimed an inability-to-pay the penalty proposed in the instant proceeding.
3. Upon receipt of Respondent's inability-to-pay claim as set forth in Respondent's Prehearing Exchange, Complainant sought the assistance of its contractor and financial expert, Industrial Economics ("IEc"), in evaluating Respondent's claim.
4. Complainant requested financial documentation from Respondent to support Complainant's evaluation of Respondent's inability-to-pay claim.
5. Between May 9, 2024, and August 6, 2024, Complainant requested, and Respondent provided, the majority of documentation sought by IEc for the completion of its ability-to-pay-analysis on the penalty amount sought in the Complaint.
6. On August 6, 2024, Complainant received IEc's final ability-to-pay analysis report (hereinafter "ATP Report").
7. Given the conclusion reached by IEc in the ATP Report, the Parties wish to engage in settlement negotiations, aiming to reach an agreement dispositive of all matters asserted in the administrative complaint, including a penalty, that would be satisfactory to both Parties.
8. Pursuant to 40 C.F.R. § 22.18(d)(3), the Parties jointly seek the appointment of a neutral to facilitate a possible settlement of this matter.
9. The appointment of a neutral should facilitate the opportunity to take into consideration the information shared in the Parties' Prehearing Exchange submittals along with the information provided in the ATP Report.
10. The Parties submit that the good cause requirement of 40 C.F.R. § 22.7(b) exists. Neither party would suffer prejudice because the appointment of a neutral would allow both Respondent and Complainant the opportunity to pursue what could be a more flexible and

efficient path towards settlement. The Parties respectfully seek to toll the time to file dispositive motions as they wish to be focused, with the assistance of the neutral, in reaching a settlement agreement, saving both time and resources on behalf of both the Complainant and Respondent.

11. The relief sought by the Parties supports the fair and orderly progression of the instant litigation. *See* 40 C.F.R. § 22.4(c)(10) (noting 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”).
12. 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”). The Parties respectfully aver that the relief sought should not, in their opinion, unduly interfere with or significantly disrupt the Tribunal’s scheduling of events in this matter. This proceeding is still in a relatively early stage, no hearing date has yet been established, and the Parties believe the relief sought is reasonable.
13. For the foregoing reasons, the Parties respectfully request that this Tribunal issue an Order granting the appointment of a neutral and the tolling of time to file dispositive motions set forth in Honorable Michael B. Wright’s June 21, 2024 Order.

RESPECTFULLY SUBMITTED this 23 day of August 2024.

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