

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF:

Homeca Recycling Center Co., Inc.
PMB 323
Luis Muñoz Marín Ave. #20
Caguas, Puerto Rico 00725

Respondent

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

ANSWER TO AMENDED
COMPLAINT AND REQUEST FOR
HEARING

Docket No. CAA-02 2024-1201

**RESPONDENT’S ANSWER TO AMENDED COMPLAINT AND REQUEST FOR
HEARING**

COMES NOW Respondent Homeca Recycling Center Co., Inc. (hereinafter, “Homeca” or “Respondent”) through its undersigned counsel, and without submitting to the jurisdiction of the U.S. Environmental Protection Agency (hereinafter, “EPA”), hereby submits its Answer to Amended Complaint and Request for Hearing, plus affirmative defenses in this matter. Except as hereinafter expressly admitted, Respondent denies each and every allegation of fact, statement, conclusion of law and matter contained in the Amended Complaint.

1. On March 20, 2024, Homeca received an Amended Complaint and Notice of Opportunity to Request a Hearing (hereinafter, “Amended Complaint”) in the captioned case.

2. According to the Order on Complainant’s Motion for Leave to Correct Complaint issued on March 15, 2024, by the Honorable Administrative Law Judge, Michael J. Wright, (the “March 15 Order”) upon filing the amended Complaint, it became the governing complaint in this matter.

3. Pursuant to the March 15 Order and consistent with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. § 22.14(c), Respondent files its answer to the Amended Complaint and requests a hearing (the “Answer”), contesting the jurisdictional findings and the material facts and conclusions of law upon which it is

based and contending that the proposed penalty is inappropriate, and that Respondent is entitled to judgment as a matter of law.

4. Respondent, without submitting to the jurisdictional authority regarding subject matter of the Regional Administrator of Region 2, EPA and/or the Caribbean Environmental Protection Division, Region 2, EPA, to issue the Amended Complaint, or waiving any rights to deny jurisdiction as a matter of law during this procedure, hereby files the Answer.

Preliminary Statement

1. Respondent denies that it failed to adequately wet the regulated asbestos-containing material, as this term is defined in 40 C.F.R. §61.141, during the renovation activity it conducted at the Tallaboa Industrial Park (hereinafter, “TIP”) located at the Tallaboa Ward, municipality of Peñuelas, Puerto Rico.

2. Respondent affirms that it complied with the applicable standards contained in the National Emission Standard for Asbestos, 40 C.F.R. §61.145 and the Work Plan agreed to between the EPA and Homeca as part of the mediation procedure and settlement in the Appeal Case No. 14-1447 before the U.S. Courts for the First Circuit (hereinafter, “Work Plan”).

3. The Work Area defined in said Work Plan occupied approximately 10 acres within the TIP property, formerly known as the Puerto Rico Olefins petrochemicals facilities. TIP is just one property within a much larger 800 acres petrochemical complex, which was built in the 1950’s and discontinued operations during the economic depression of the 970s, known as the Commonwealth Oil Refining Company (hereinafter, “CORCO”), of which the Puerto Rico Olefins was a part of.

CORCO included eight petrochemical plants that remain abandoned as of this date. These plants have been extensively documented to contain Asbestos Containing Materials (hereinafter, “ACM”), mostly in transite-type of material used in insulation of petroleum cracking and refining equipment, tanks, distillation columns, boilers, chimneys, and pipes like the ones that existed at the TIP.

It is common knowledge that these petrochemical plants had remained in complete disarray for over four (4) decades, including the ACM exposed to all types of climate conditions, including hurricanes, and without controls from becoming airborne and/or contained in any shape or form. These other petrochemical plants have been allowed to remove ACM by collecting them when they are blown by the wind and fall to the ground through periodic field inspections.

Under this scenario, Homeca originated the effort, with the TIP owner, to re-vitalize the industrial area by initiating a voluntary renovation project whereby the ACM would be removed, and the petrochemical facilities recycled as scrap metal, to bring back economic life and activity to an area otherwise economically depressed.

4. In 2009, Homeca initiated the renovation activities inside the Work Area of the TIP. Since then, Homeca removed some 11,000 cubic yards of ACM from the Work Area, that is the equivalent of some 100 shipping containers. These were removed and disposed of at an approved landfill pursuant to NESHAP requirements and local permits. Homeca's work was finished in 2021, leaving the Work Area clean, with all petrochemical equipment facilities removed, and ready for new industrial activities to begin.

5. As of this date, no other areas in the CORCO petrochemical complex have initiated comprehensive renovation like the one undertaken by Homeca and the TIP owner, and remain abandoned, in disarray and with uncontrolled ACM. Unfortunately, contrary to the effects of the instance case, renovation and revitalization of the area should be promoted as part of public policy matters, including environmental protection policy.

Answer to Findings of Fact

6. Respondent admits paragraphs numbered 36, 37, 39, 40, 41, 42, 43, 44, 45, 51, 52, 53 and 54.

7. Respondent admits paragraph 38 and clarifies that its new mailing address is PMB-323 Luis Muñoz Marín Ave. #20, Caguas PR 00725

8. Respondent denies paragraph 46, as drafted, and clarifies that the set up was around a distillation column and that the bags accumulated inside the waste containers were part of the work in progress for re-bagging prior to off-site transportation, part of the procedure followed. This procedure was followed due to the working conditions at the site, which consist of ACM removal from distillation columns over 100 feet high, inside enclosures supported by scaffolding structure in a very hot and dry ambient, typical of the southern part of the Island in the Tallaboa Ward of Peñuelas.

9. Respondent denies paragraphs 47, 48, 49 and 50, as drafted, and clarifies that the ACM that covered the metal tanks and columns was adequately wetted when it was cut and stripped, and that the observations made by the inspector are not indicative of the procedure followed by Homeca.

10. Respondent denies paragraph 55, as drafted, and clarifies that it has no personal knowledge if all the locations marked were inside the Work Area.

11. Respondent denies paragraph 56, as drafted, as it has no personal knowledge of the locations of the samples taken and those the alleged results.

Answer to Conclusions of Law

12. Respondent admits paragraphs numbered 57, 58, 59, 60, 61, 62, 63 and 64.

As to Count 1: Failure to adequately wet asbestos containing material and ensure that it remains wet until collected.

13. In response to paragraph 65 Respondent re-alleges answers to paragraphs 36-64, incorporated herein by reference and made an integral part hereof.

14. Paragraph 66 does not require a response as it is a restatement of the regulatory section.

15. Respondent denies paragraph 67, as drafted, and clarifies that the reference section is subject to the applicable standard in 40 C.F.R. §61.150.

16. Respondent denies paragraphs 68 and 69, as drafted, as it reaches a conclusion that does not conform to nor takes into consideration the reality of the ambient and working conditions at the project site, nor is it supported by substantial evidence in the administrative record.

As to Count 2: Failure to wet and seal all asbestos containing waste material in leak tight containers while wet.

17. In response to paragraph 70 Respondent re-alleges answers to paragraphs 36-64, incorporated herein by reference and made an integral part hereof.

18. Respondent admits paragraph 71.

19. Respondent denies paragraph 72 and 73, as drafted, as it reaches a conclusion that does not conform to nor takes into consideration the reality of the ambient and working conditions at the project site, nor is it supported by substantial evidence in the administrative record.

As to Count 3: Failure to label the container or wrap materials containing Asbestos-waste containing material.

20. In response to paragraph 74 Respondent re-alleges answers to paragraphs 36-64, incorporated herein by reference and made an integral part hereof.

21. Respondent admits paragraph 75.

22. Respondent denies paragraphs 76 and 77, as drafted, as it fails to recognize that the accumulation was a work in progress as part of the procedure for final transportation off the facility site. Thus, the controversy was not ripe for a conclusion of law to be based thereon.

As to Count 4: Failure to remove and deposit all asbestos-containing waste material at a waste disposal site.

23. In response to paragraph 78 Respondent re-alleges answers to paragraphs 36-64, incorporated herein by reference and made an integral part hereof.

24. Respondent admits paragraphs 79 and 80.

25. Respondent denies paragraphs 81 and 82, as drafted, as it does not understand what is meant by vacated, and it reaches a conclusion that is not supported by substantial evidence regarding the origin of the suspected ACM and its location.

As to Count 5: Failure to comply with an administrative compliance order.

26. In response to paragraph 83 Respondent re-alleges answers to paragraphs 36-64, incorporated herein by reference and made an integral part hereof.

27. Respondent admits paragraphs 84 and 85.

28. Respondent denies paragraph 86 as it is based on facts of which Respondent has no personal knowledge, and the reference order was already terminated based on its own terms and applicable law.

29. Respondent denies paragraph 87, as drafted, as it does not understand what is meant by abandoning the Work Site Area, and it reaches a conclusion that is not supported by substantial evidence regarding the origin of the suspected ACM that allegedly remained present and its location.

Affirmative Defenses

Respondent asserts the following affirmative defenses based on its current knowledge and information, reserving the right to withdraw any of these defenses or to assert additional defenses as further information becomes available.

1. Respondent has complied with all applicable laws and regulations.
2. The factual allegations and conclusions of law contained in the Complaint fail to recognize nor include as a finding of facts, that the ACM abated by Respondent was the type that is impermeable to water. Thus, it would not absorb water after being wetted during stripping.
3. The Complaint fails to recognize and include as findings of facts, that the ACM was removed inside enclosures installed around scaffolding structures around the distillation towers, 100 to 150 feet above ground elevation, in extremely hot and dangerous conditions. While the removal of the ACM was being conducted, Homeca's employees wetted the ACM as it was being removed. It is a fact that the type of ACM removed was impermeable to water. It is an additional fact that the ambient temperatures during removal activities were extremely hot, both outside but most significantly, inside the enclosed scaffolding structures. Thus, the means and methods followed were used to allow for safer working conditions and further work to be conducted at ground elevation.
4. Actual field data collected during removal of the ACM included (1) third party clearance samples and analysis of the air inside the enclosures collected during the renovation work, plus (2) ambient air samples collected around the Work Area during the

removal operations. Scientific evidence from these sampling and analysis activities show that wetting activities were adequate and applicable threshold levels were not exceeded.

5. The Complaint is time-barred. The alleged waiver granted by the Department of Justice to the EPA of the CAA Section 113(d) 12-month time limitation on EPA's authority to initiate the administrative penalty action in this matter does not conform applicable laws and violates Respondent constitutional rights against *ex post facto* application of legal consequences to Respondent's actions.

6. EPA lacks jurisdiction over a program already delegated to the Department of Natural and Environmental Resources of the Government of Puerto Rico.

7. Respondent does not waive its constitutional right for equal protection under the laws and equal application of legal and regulatory requirements.

8. There has been no actual harm, imminent or substantial endangerment to the public or the environment from Respondent's activities at the site. On the contrary, as briefly advanced in the Preliminary Statement above, and with the intention of putting in perspective the benefits to the environment resulting from the work performed by Respondent, it has abated some 11,000 cubic yards of ACM from an area of 10 acres within the 800 acres of the Petrochemical Complex.¹

The waste ACM that was noticed by the NESHAP Inspector during the June 30, 2021, inspection added up to 1 cubic foot, that is, 0.04 cubic yards of ACM. This material was collected into one (1) bag and could barely fill the bottom of that one bag.

The counts regarding this 0.04 cubic yards of ACM lacks reasonableness and adequate justice, compared to the 11,000 total removed by Homeca and does not justify the proposed penalty. It does not advance public policy and the balance between cleaner air and a healthy economy.

9. There is no substantial evidence, as this term is defined under applicable case law, which supports the conclusions and proposed penalties in this case.

10. The findings of facts in the Complaint regarding were premature, as Homeca was in the process of conducting its work in progress. Thus, conclusions based thereon are not ripe.

¹ The ACMs consisted of the insulation of pipes, tanks, distillation columns and ancillary equipment. The condition of the ACMs can be summed as partially dismantled, broken, and blown away by the passing of time, effect of the climate, including hurricanes, and absence of maintenance or repairs. We make this clarification because the project was to achieve an improvement of the environmental conditions that existed at the site during all this time, particularly the uncontrolled asbestos fibers being blown away by the wind at the site. (Note that the climate in Tallaboa is very dry, hot, and very windy). To remove the metal as scrap for recycling purposes, the ACM had to be removed.

11. There are intervening causes from other asbestos sources, including naturally occurring asbestos in the area and ACM falling debris from the other petrochemical facilities in the area.²

12. Respondent reserves the right to use and raise other affirmative defenses, such as that of laches, violation of due process, estoppels, lack of jurisdiction over the subject matter and person, during the discovery procedures.

Informal Settlement Conference

13. Pursuant to EPA policies, Respondent has held an informal settlement conference with EPA counsel and is open to continuing such efforts in good faith and with the intention of resolving the subject matter.

Request for Formal Hearing

14. Respondent hereby requests a formal hearing.

Contest of the Proposed Penalty

15. Respondent contends that there are no economic benefits from the alleged violations. The extent, circumstances and gravity of the alleged violations, if any, prior history of violations, good faith efforts to comply, degree of culpability, if any, economic benefit, if any, savings accruing to Respondent by virtue of the violations, Respondent's ability to pay the proposed penalty, environmental damages, if any, and/or such other matters as justice may require, demonstrate that respondent should not be penalized or that the proposed penalty amount is inappropriate.

16. The extent of time during which violations have allegedly been committed is denied and/or is overbroad and excessive.

In Guaynabo, Puerto Rico, this April 10, 2024.

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² The TIP property has other areas that are occupied by storage tanks, pipes and related equipment, many of which also have ACM, and which were not part of the Work Area where Homeca conducted the abatement and scrap metal removal.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

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Homeca Recycling Center Co., Inc.

Respondent

Docket No. CAA-02 2024-1201

CERTIFICATE OF SERVICE

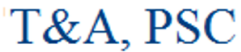
I certify that, on the dated noted below, I caused to mail, by electronic mail, a copy of the ANSWER TO AMENDED COMPLAINT AND REQUEST FOR HEARING to the following persons at the electronic address listed below:

- 1) Evelyn Rivera-Ocasio, Esq., Assistant Regional Counsel, Office of Regional Counsel – Caribbean Team, U.S. Environmental Protection Agency, Region 2, rivera-ocasio.evelyn@epa.gov; and
- 2) Sara Amri, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 2, Amri.Sara@epa.gov.
- 3) Mary Angeles, Headquarters Hearing Clerk, via OALJ E-filing System.

April 10, 2024

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Receipt confirmation for your eFiling

1 message

US EPA Notes Software Authority <US_EPA_Notes_Software_Authority@epa.gov>

Wed, Apr 10, 2024 at 1:27 PM

To: rtoro@toro-arsuaga.com

Cc: angeles.mary@epa.gov

Hello RAFAEL TORO-RAMIREZ,

We've received your document submission as follows:

Case Name: Homeca Recycling Center Co., Inc....

Case Number: CAA-02-2024-1201

Role: Attorney for Respondent(s)

File name: Answer to Amended Complaint and Request for Hearing final.pdf

Received: 4/10/2024 1:27:46 PM

Filing ID: PINT-D47NER

Description: Respondent's Answer to Amended Complaint and Request for Hearing

While most electronic filings are handled the same business day, it can take up to two business days to process your documents. You will receive notification from the clerk if there is any problem with the submission.

If you have questions about your submission please use the information above as a reference when you contact the clerk. Thank you for eFiling with the Office of Administrative Law Judges.

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