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 COMPLAINANT'S REBUTTAL PREHEARING EXCHANGE

INFORMATION CLAIMED AS CONFIDENTIAL HAS BEEN DELETED
CONFIDENTIAL BUSINESS INFORMATION ("CBI") REDACTED VERSION[1]

COMPLAINANT'S REBUTTAL PREHEARING EXCHANGE

Pursuant to Rule 22.19(a) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. § 22.19(a), and the Presiding Officer's Prehearing Order, dated January 19, 2024, as modified, most recently, by the Order on Respondent's Unopposed Motion for an Extension of Time, issued on June 21, 2024,[2] Complainant hereby submits this Rebuttal Prehearing Exchange in response to Respondent's Redacted Initial Prehearing Exchange (hereinafter referred to as "Respondent's Prehearing Exchange") filed on April 26, 2024, as supplemented by Respondent on May 17, 2024 and July 3, 2024.[3] Complainant respectfully reserves its right to supplement its Rebuttal Prehearing Exchange in accordance with Section 22.19(f) of the Consolidated Rules of Practice.

I. ADDITIONAL WITNESSES INTENDED TO BE CALLED BY COMPLAINANT

In Respondent's Prehearing Exchange, Respondent raised its inability-to-pay the proposed penalty in this matter. Complainant subsequently retained the services of Industrial Economics,

[1] Pursuant to 40 C.F.R. §22.5(d) of the Consolidated Rules of Practice, a complete copy of this Rebuttal Prehearing Exchange containing the information claimed confidential has been filed with the Office of Administrative Law Judges.
[2] The prehearing schedule was first modified pursuant to the April 9, 2023 Order on Parties' Motions Regarding the Prehearing issued by Honorable Judge Michael B. Wright granting Respondents Motion for Leave to File Prehearing Exchange Out of Time and Request for Authorization to File Prehearing Exchange Out of Time as well as Complainant's Response to Respondent's Motion(s) for Leave to File Prehearing Exchange Out of Time and Cross Motion for Extension of Time.
[3] Respondent filed its Prehearing Exchange on April 26, 2024. Complainant notes that Respondent supplemented its Prehearing Exchange on May 17, 2024, and then again, most recently, on July 3, 2024 to include several additional exhibits, some of which were redacted.

Incorporated ("IEc") to perform an ability-to-pay analysis. Complainant is adding Ms. Ekaterina (Katya) Smirnova to its witness list as an Expert Witness to testify about Respondent's ability-to-pay the proposed penalty.

Ekaterina (Katya) Smirnova
Principal
Industrial Economics, Incorporated

Ms. Smirnova received a Bachelor of Arts degree, *with honors*, in Economics (subsidiary qualification of English Language Interpreter) from St. Petersburg State University (St. Petersburg, Russia) in 2003 and a Master of Arts degree in Economics from Northeastern University (Boston, MA) in 2007.

Ms. Smirnova, a Certified Fraud Examiner, has over 17 years of experience and specializes in economic, financial, and policy analysis in the context of enforcement proceedings, litigation, and policy making. She provides expert analytical support to federal and state enforcement agency clients on projects involving assessments of economic benefit of noncompliance and financial capabilities of violating entities (businesses, individuals, municipalities, etc.) to finance investments in environmental controls and pay for penalties. Ms. Smirnova has provided testimony and has been retained as a testifying expert on over a dozen of cases in state and federal jurisdictions. As a Principal with IEc, she manages contracts and directs projects within her area of expertise.

Complainant may supplement its witness list, upon adequate notice to the Tribunal and to Respondent, should information reveal the need for additional witnesses. Additionally, Complainant reserves the option of calling any witness Respondent has listed in its Prehearing Exchange but has not called to testify. Complainant further maintains all reservations pertaining

to its witness list as set forth in Complainant's March 1, 2024 Prehearing Exchange ("Initial Prehearing Exchange") and as otherwise provided in 40 C.F.R. Part 22.

II. ADDITIONAL EXHIBITS COMPLAINANT SEEKS TO INTRODUCE IN RESPONSE TO RESPONDENT'S PREHEARING EXCHANGE

Complainant intends to introduce the following additional documents into evidence at the hearing on this matter. Copies of these additional documents are attached to Complainant's Rebuttal Prehearing Exchange.

CX#	Description of Exhibit
174	Complainant's Prehearing Exchange dated March 7, 2024*
175	Complainant's Amended Complaint and Notice of Opportunity to Request a Hearing dated March 20, 2024*
176	Respondent's Amended Answer to the Amended Complaint dated April 10, 2024
177	Respondent's Prehearing Exchange dated April 26, 2024
178	Ekaterina (Katya) Smirnova Resume
179	IEc Ability-to-Pay Analysis for Homeca Recycling Center Co., Inc. dated August 6, 2024**

** This exhibit could not be identified/labeled as required by the Prehearing Order, dated January 19, 2024, as it was electronically signed and/or electronically certified, and any edits would render the signature invalid.*

*****In accordance with 40 C.F.R. § 22.5(d) and the Prehearing Order, Complainant is filing this exhibit (or part of exhibits) under seal as it contains information that has been claimed confidential business information (CBI) by Respondent or that may be personally identifiable information (PII).***

III. COMPLAINANT'S RESPONSE TO RESPONDENT'S AMENDED ANSWER TO AMENDED COMPLAINT

Pursuant to Rule 22.19(a) of the Consolidated Rules of Practice, 40 C.F.R. § 22.19(a), and the Presiding Officer's January 19, 2024 Prehearing Order, Complainant filed its Initial Prehearing Exchange on March 1, 2024.

On March 7, 2024, after filing its Initial Prehearing Exchange, Complainant filed a Motion for Leave to Correct Typographical Errors in the Complaint. On March 15, 2024, the Presiding Officer granted Complainant's motion and ordered Complainant to file an Amended Complaint reflecting the proposed corrections, indicating that upon filing, the amended Complaint will become the governing complaint in the instant proceeding. The March 15, 2024 Order also directed Respondent to file an Amended Answer within twenty (20) days from the date of service of Complainant's Amended Complaint, if Respondent wished to do so.

Complainant filed the Amended Complaint and Notice of Opportunity to Request a Hearing ("Amended Complaint") on March 21, 2024. (CX 175). Respondent filed an Answer to the

Amended Complaint and Request for Hearing ("Amended Answer") on April 10, 2024 (CX 176).

Part 2(B) of the January 19, 2024 Prehearing Order required that Complainant submit a brief narrative statement, and a copy of any documents in support, explaining in detail the factual and/or legal bases for the allegations denied or otherwise not admitted in Respondent's Answer.

Complainant notes that, with the exception of paragraphs 56 and 66 of the Amended Answer, discussed below, the denials set forth in Respondent's Amended Answer mirror those set forth in Respondent's December 4, 2023 Answer to the Complaint. (CX 4). Thus, Complainant's responses to those denials, which were addressed in its March 1, 2024 Prehearing Exchange, remain unchanged and are incorporated herein. (CX 174).

Paragraph 56

Paragraph 56 of the Amended Complaint states as follows: "During the June 2021 Inspection, the EPA NESHAP Inspector took nine (9) samples of visible debris, left from the renovation activities, in the immediate vicinity and inside the Work Site Area.[4] These samples were sent to a National Voluntary Laboratory Accreditation Program certified laboratory for analysis. Of the nine (9) samples taken, seven (7) sample results came back as ACM." (CX 175).

In its Amended Answer, Respondent states that it "denies paragraph 56 of the Amended Complaint, as drafted, stating that it has no personal knowledge of the locations of the samples taken and the alleged results." (CX 176)

Complainant Response to Respondent's Denial: On the date of the inspection, June 30, 2021, Mr. Eduardo Ramos Vera, Homeca's General Manager; Lynette Correa Bonet, Homeca's Compliance Officer; and, Rafael Toro, Homeca's Legal Counsel, were among the individuals present at the site upon arrival of the EPA inspectors (CX 26). The EPA inspectors proceeded to perform a walkthrough of the site marking with flags locations where suspected asbestos containing material ("ACM") was observed. During the closing conference of the inspection, the EPA inspectors informed Mr. Ramos Vera of the number of flags placed at locations where potential ACM was visually observed as well as the number of samples taken. Respondent did not collect samples nor did Respondent request split samples of the samples collected by the EPA inspectors during the inspection.

Paragraph 66

Paragraph 66 of the Amended Complainant states as follows: "40 C.F.R. § 61.145(c)(3) requires that when RACM is stripped from a facility component while it remains in place in a facility

[4] The Work Site Area is an area of approximately 10 acres in size located within the Talloboa Industrial Park Complex. Respondent was hired by the owner of the Tallboa Industrial Park Complex to dismantle structures and perform asbestos removal and demolition of the structures for scrap recycling activities at the Work Site Area. *See* CX 175 (Amended Complaint) at ¶ 40; *see also* CX 176 at ¶ 6 (Amended Answer)(Respondent's admission of paragraph 40 of the Amended Complaint).

subject to the Asbestos NESHAP, the owner and/or operator must adequately wet the RACM during the stripping operation." (CX 175)

In its Amended Answer, Respondent neither admits nor denies paragraph 66 of the Amended Complaint, stating that "it does not require a response as it is a restatement of the regulatory section." (CX 176). Complainant interprets Respondent's answer to paragraph 66 as tantamount to an admission and therefore does not address it herein.

IV. COMPLAINANT'S RESPONSE TO RESPONDENT'S SECTION 1(C) TIME FOR PRESENTATION OF DIRECT CASE, INTERPRETER AND LOCATION OF THE HEARING

Respondent requests, pursuant to Section 22.19(d) and 22.21(d) of the Consolidated Rules of Practice, for the prehearing conference and the hearing to be held in Tallaboa Ward in the municipality of Peñuelas, Puerto Rico, where Respondent maintains it "conducts the business which the hearing concerns." (CX 177).

Complainant notes that, in addition to stating that "the prehearing conference shall be held in the county where the respondent resides or conducts the business which the hearing concerns," Section 22.19(d) of the Consolidated Rules of Practice provides that the prehearing conference could also be held "in the city in which the relevant Environmental Protection Agency Regional Office is located, or in Washington, DC, unless the Presiding Officer determines that there is good cause to hold it at another location or by telephone." Such is the case to for the location of the hearing. *See* 40 C.F.R. 22.21(d) ("The location of the hearing shall be determined in accordance with the method for determining the location of a prehearing conference under § 22.19(d).").

The violations alleged in the Complaint occurred in the Tallaboa Industrial Park Complex located at Road 385 Km. 5.4, Tallaboa Poniente Ward, in Peñuelas, Puerto Rico. In its Answer, Respondent admits that Respondent's main business address is in the municipality of Caguas, Puerto Rico.

On February 8, 2024, pursuant to the January 19, 2024 Prehearing Order, Complainant filed a Status Report on Settlement and Preliminary Statement stating its preference that the hearing be held in person in Guaynabo, Puerto Rico, where the EPA Region 2, Caribbean Environmental Protection Division office is located or, as an alternative, to be held in the Puerto Rico Federal District Court in San Juan, Puerto Rico.

The municipality of Caguas, Respondent's main place of business, is approximately 18 miles from Guaynabo or San Juan. Having the hearing in Guaynabo or San Juan should not cause a prejudice to the Respondent.[5]

[5] Complainant, upon adequate notice to Respondent and the Tribunal, reserves its right to request Complainant's witnesses present testimony remotely.

V. COMPLAINANT'S LIMITED RESPONSE TO RESPONDENT'S PURPORTED "PERTINENT PREAMBLE"

With the enactment of the Clean Air Act ("CAA" or "the Act"), asbestos was listed among the initial hazardous air pollutants ("HAPs") for which EPA was required to promulgate regulations establishing emission standards, referred to as National Emissions Standards for Hazardous Air Pollutants ("NESHAPs"). HAPs are those pollutants that are known or suspected to cause cancer or other serious health effects, or adverse environmental effects. To that effect, EPA promulgated the Asbestos NESHAP with the purpose of establishing work practices to minimize the release of asbestos fibers during activities involving the handling of asbestos.

In the section Respondent has denominated "Pertinent Preamble," Respondent makes representations as to its historical involvement at the Tallaboa Industrial Park, dating back to 2009—the majority of which appear to be wholly irrelevant to Complainant's instant action against Respondent for Respondent's 2019 and 2021 violations of the Asbestos NESHAP. As such, Complainant is providing a limited response below. Complainant preserves all objections as to the admissibility of the information and cited-to exhibits listed in this section, 40 C.F.R. § 22.23, and, to the extent that it may be necessary, may further address Respondent's narrative in any dispositive motions.

2009-2015 Preamble Subsections

Respondent states that in 2009 it became the contractor for Tallaboa Industrial Park, LLC ("TIP"), the owner of the Tallaboa Industrial Park Complex ("TIPC"), "for removal and recycling of the facilities as scrap metals." (CX 177)

Respondent makes further representations as to its history working as a contractor engaging in demolition projects involving abatement of asbestos containing material. Furthermore, Respondent includes a lengthy narrative discussing Respondent's version of events that occurred from 2009 through 2015, and Respondent's eventual development of a Work Plan[6] for remediating asbestos contamination at the Work Site Area.

In this section, Respondent represents that "the climate conditions in the Tallaboa Ward is [sic] characterized as being very dry, hot, and very windy, as it is close to the coast of the Caribbean Sea." (CX 177). However, as discussed further *infra* at Section VII, compliance with Asbestos NESHAP work practice requirements is not dependent on the weather conditions described by Respondent.

2017-2021 Preamble Subsections

In this portion of its response, Respondent continues to make representations as to the history of

[6] Pursuant to EPA's Clean Air Act Compliance Order (CAA-02-2014-1009), Homeca, along with Tallaboa Industrial Park, LLC, were to develop and submit of a compliance plan that would ensure compliance with the Asbestos NESHAP at the Tallaboa Industrial Park facility. *See* CX 13. ("Work Plan to Comply with Compliance Order CAA-02-2014-1009").

its removal work at the Work Site Area. Respondent describes purported working conditions at the Work Site Area, such as workers working on scaffolding structures "approximately 200 feet high" erected around distillation columns in "hot and windy conditions" inside enclosures installed around those columns. (CX 177).

Additionally, Respondent states that "the ACM insulation material is impermeable to water, [sic] therefore does not absorb water, but rather, when water is applied it flows on its surface." Respondent represents that "the ACM was wetted while stripping and preliminarily bagged at those heights" and that "the bags were placed in containers at the ground level for re-bagging operation prior to transportation off-site." (CX 177)

Again, Complainant stresses that compliance with the Asbestos NESHAP work practice requirements (or Respondent's lack thereof in the instant proceeding) is not dependent upon the working and/or weather conditions described by Respondent. Furthermore, as discussed *infra* at Section VII, and as the Asbestos NESHAP inspector will testify, Respondent's statement as to the impermeability of the ACM insulation material is wholly inaccurate.

Furthermore, the Asbestos NESHAP work practices require that, after wetting, the ACM must be sealed in leak-tight containers while wet. During the inspection performed on July 31, 2019, the inspector observed visible dust upon opening of the waste containers along with bags containing suspected ACM that were torn in all four containers. Furthermore, as discussed *infra* in Section VII, the inspector randomly selected 12 sealed and untorn leak-tight bags from within four different waste containers on site. Upon opening the leak-tight bags, the inspector observed that the suspected ACM was dry with no evidence of any moisture present. Of the 12 samples taken for laboratory testing, all were later confirmed to be ACM.

Complainant has uncovered no evidence of the Asbestos NESHAP inspector having directed Respondent to engage in a work practice contrary to what is required by the Asbestos NESHAP, as Respondent seemingly attempts to suggests in its preamble statement. (CX 177). To the contrary, during the July 31, 2019 inspection, the inspector advised Respondent's representatives to adequately wet all regulated ACM and put the ACM in leak-tight bags, as *required* by the Asbestos NESHAP. (CX 26 at 2-3) (emphasis added).

Complainant's action against Respondent is reasonable, just, and does not contradict public policy. Neither is Complainant abusing its enforcement discretion as Respondent attempts to suggest. Complainant was merely exercising its enforcement authority to ensure Respondent's compliance with the work practices required under the Asbestos NESHAP to safeguard human health and protect the environment.

VI. COMPLAINANT'S RESPONSE TO RESPONDENT'S SECTION 3(A) COPY OF DOCUMENTS IN SUPPORT OF THE DENIALS MADE IN THE ANSWER TO AMENDED COMPLAINT

Section 3(A) of the Prehearing Order requires Respondent to provide "a copy of any documents in support of the denials made in its Answer." In its response, Respondent provides a list of

nineteen exhibits that it maintains support its denials and further references its exhibits list as set forth in Section 1(B) of Respondent's Prehearing Exchange.

However, here, Respondent provides no indication as to which exhibit(s) support which specific denial nor does Respondent provide any explanation for how a particular exhibit lends support to Respondent's denials. As such, Complainant is unable to substantively respond.

Complainant preserves all potential objections as to the admissibility of the cited-to exhibits listed in both Section 1(B), as supplemented,[7] and Section 3(A) of Respondent's Prehearing Exchange and maintains that the majority appear to be neither relevant nor persuasive to the instant proceeding.

VII. COMPLAINANT'S RESPONSE TO RESPONDENT'S SECTION 3(B) COPY OF DOCUMENTS IN SUPPORT OF ASSERTED AFFIRMATIVE DEFENSES AND EXPLANATION OF THE ARGUMENTS IN SUPPORT OF SUCH AFFIRMATIVE DEFENSES

Respondent has the burden of persuasion regarding affirmative defenses. Section 22.15(b) of the Consolidated Rules of Practice states that Respondent's "answer shall also state: [t]he circumstances or arguments which are alleged to constitute the grounds of any defense …" 40 C.F.R. § 22.15(b). Furthermore, Section 22.24(a) of the Consolidated Rules of Practice states that "respondent has the burdens of presentation and persuasion" for its defenses. 40 C.F.R. § 22.24(a). Thus, under the applicable rules of practice, Respondent is required to state the "circumstances or arguments" which support the grounds of its defenses in its answer to the complaint. 40 C.F.R. §§ 22.15(b); see also 40 C.F.R. § 22.24(a). As such, Section 3B of the January 19, 2024 Prehearing Order provides that Respondent shall submit as part of its Prehearing Exchange, "a copy of any documents in support of any asserted affirmative defenses and an explanation of the arguments in support of any such affirmative defenses."

Notably, however, Respondent's Prehearing Exchange fails to provide any sort of discernible explanation of the arguments in support of its purported affirmative defenses—instead merely repeating its barebones defenses as asserted in its Amended Answer and providing a list of exhibits purportedly in support with no explanation whatsoever for how they provide support. Unfortunately, given that Respondent neither explains the basis for its purported affirmative defenses nor how the cited-to exhibits are in anyway relevant or provide support to Respondent's purported affirmative defenses, it is nearly impossible for Complainant to substantively respond in the instant Rebuttal.

Nonetheless, for the sake of completeness, Complainant, where feasible, has attempted to respond to the best of its ability given the circumstances, but stresses that it does not agree with any unexpressed argument Respondent believes it has preserved with its general reference to its exhibits.

[7] Respondent supplemented its prehearing exchange on May 17, 2024 and, most recently, on July 3, 2024 to include several additional exhibits, some of which were redacted.

AFFIRMATIVE DEFENSE 1: "Respondent has complied with all applicable laws and regulations." (CX 176 p. 5, ¶ 1; CX 177 p. 12).

Complainant reasserts its allegations against Respondent as set forth in its Amended Complainant. Complainant also notes that Respondent's general statement, as alleged, is not an affirmative defense, but nothing more than an unsupported barebones assertion.

AFFIRMATIVE DEFENSE 2: [Complainant notes that paragraph 2 of Respondent's Affirmative Defenses, as raised within its Amended Answer, does not appear to be included among the Affirmative Defenses referenced in Respondent's prehearing exchange. As such, Complainant considers it waived, and therefore does not directly address it herein.] (CX 176 at page 5, ¶ 2).

AFFIRMATIVE DEFENSE 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 for safer working conditions and further work to be conducted at ground elevation." (CX 176 p. 5, ¶ 3; CX 177 p. 12).

Complainant is unable to ascertain how Respondent's statement constitutes an affirmative defense to its failure to comply with the Asbestos NESHAP work practice requirements. Respondent appears to suggest that the working conditions—namely the height of the distillation towers and the purported high temperatures during which its removal activities were conducted—either 1) justified its departure from the Asbestos NESHAP work practice standards (*see i.e.*, "the means and methods followed were used for safer working conditions and further work to be conducted at ground elevation") and/or 2) provide an explanation for why the Asbestos NESHAP inspector discovered bone dry ACM present at the work site during his inspection. However, as the Asbestos NESHAP inspector will testify, had the ACM been adequately wet at the time it was placed by Respondent in the leak-tight bags, despite the temperature conditions Respondent purports existed, moisture would have been present in the bag upon opening.

Furthermore, had Respondent believed that compliance with the Asbestos NESHAP during its stripping activities presented a safety hazard to its workers given the conditions under which the work was purportedly occuring, Respondent could have 1) stopped its stripping activities such that it was not in a position of choosing between complying with the Asbestos NESHAP under conditions it believed presented a safety hazard as opposed to continue conducting its activities out of compliance with the Asbestos NESHAP (also a safety hazard) and/or 2) sought prior approval from the Administrator for an exemption from the requirement to adequately wet regulated asbestos containing material ("RACM ") during its stripping activities based on its

belief that such compliance would present a safety hazard in the instant scenario. *See* 40 C.F.R. § 61.145(c)(3)(i). Instead, Respondent unilaterally determined that it was appropriate to deviate from the work practice standards set forth in the Asbestos NESHAP and adopt certain "means and methods" which it deemed to support "safer working conditions and further work to be conducted at ground elevation."

Furthermore, even assuming, *arguendo*, that Respondent had sought written approval for the above-described exemption and that written approval was granted, Respondent nonetheless had an obligation post-stripping to ensure that all RACM was "adequately wet and to ensure that it remain[ed] wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150," *see* 40 C.F.R. § 61.145(c)(6)), and further to "adequately wet [the] asbestos containing waste material" ("ACWM"), and "[a]fter wetting, seal all [ACWM] in leak-tight containers while wet." *See* 40 C.F.R. § 61.150 (a)(1)(iii)). No exemption exists for Respondent for these requirements. As the Asbestos NESHAP inspector will testify, the evidence is indicative of Respondent's failure to comply with these work practice requirements. Specifically, during the July 31, 2019 inspection, the inspector randomly selected 12 sealed and untorn leak-tight bags from within four different waste containers on site. Upon opening the leak tight bags, the inspector observed that the suspected ACM was dry, and no evidence of any moisture was present. Of the 12 samples taken for laboratory testing, all were later confirmed to be ACM.

Lastly, Respondent asserts that "it is a fact that the type of ACM removed was impermeable to water." The Asbestos NESHAP inspector is expected to testify that this statement is patently false. Respondent provides no evidence whatsoever to support this statement. Notably, as evidenced through the laboratory sample results, of the 12 sample results taken, which appeared to be insulation material, all contained a mixture of either amosite or chrysotile in the amount of 55% to 80%, with the remaining percentage non-asbestos fill material (binder), which, as the Asbestos NESHAP inspector will testify, easily absorbs water. (CX 67). Thus, even assuming, *arguendo*, that the asbestos identified in the samples was impermeable (it is not), had Respondent adequately wet the ACM identified in the sealed leak-tight bags, as it was required to do, moisture would have indeed been present upon the inspector's opening of the bags.

AFFIRMATIVE DEFENSE 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." (CX 176 p. 5, ¶ 4; CX 177 p. 12-13).

Complainant is unable to ascertain how Respondent's statement constitutes an affirmative defense to its failure to comply with the Asbestos NESHAP work practice requirements.

Complainant is unsure what Respondent means through its statement that its sampling activities show "that wetting activities were adequate" and that "applicable threshold levels were not exceeded." (i.e., is Respondent referring only to its stripping operations? And what "applicable

threshold level" is Respondent referring to?). Ambiguity in Respondent's assertions aside, Respondent's seeming attempt to rely on its purported air monitoring samples to refute Complainant's assertions as to Respondent's failure to adequately wet asbestos is misplaced.

Courts have made clear that the Government need not show that emissions of asbestos occurred in order to prove violation of the Asbestos NESHAP. Specifically, the Government is not required to establish visible emissions in order to prove asbestos was not adequately wetted. *See United States v. Ben's Truck & Equip., Inc.*, Civil No. S-84-1672-MLS, 1986 U.S. Dist. LEXIS 25595, at *12 (E.D. Cal. May 12, 1986) (stating that the failure to follow the work practice standards, rather than the release of visible emissions, creates liability); *United States v. MPM Contractors, Inc.*, 767 F. Supp. 231, 233-34 (D. Kan. October 2, 1990) ("Defendant has not identified and we are not aware of any other court which has held dust emissions a prerequisite to finding that friable material were inadequately wetted."); *See also In re Echevarria* , 5 E.A.D. 626, 641 (E.P.A. December 21, 1994) ("[T]o establish a violation of the adequately wet requirements, it is not essential for the Agency to provide that emissions occurred.").

Rather, "[i]n cases involving alleged violations of the NESHAP for asbestos, courts have routinely relied on the observations of inspectors to determine whether the asbestos was adequately wetted." *See MPM Contractors, Inc.*, 767 F. Supp. at 234 (internal cites omitted); *see also United States v. Sealtite Corp.*, 739 F. Supp. 464, 467 (E.D. Ark. 1990); *see Ben's Truck & Equip., Inc.*, 1986 U.S. Dist. LEXIS 25595, at *12. As highlighted in *MPM Contractors, Inc*., the court in *Sealtite*, for example, "did not require the government to prove that there were emissions, but only that the asbestos was not adequately wet. Rather, State inspectors observations that the asbestos containing waste materials had not been adequately wetted was enough to hold defendant liable as a matter of law." *See MPM Contractors, Inc.*, 767 F. Supp. at 234 (citing *United States v. Sealtite*, 739 F. Supp. at 469; *Ben's Truck & Equip., Inc,* 1986 U.S. Dist. LEXIS 25595, at *12).

In any event, in the instant case, not only did the Asbestos NESHAP inspector observe, during the July 31, 2019 inspection, the presence of visible dust emissions from torn bags of suspected ACM at the work site, but also, upon opening of untorn, leak-tight bags of suspected ACM, observed visible dust emissions inside the bags, and suspected dry ACM, with no evidence of water or moisture present—indicative of Respondent's failure to adequately wet the ACM. Of the 12 samples taken of suspected ACM taken at the work site, all were later confirmed through laboratory testing to be ACM containing asbestos percentages far greater than the minimum 1 percent threshold set through the Asbestos NESHAP regulations. (CX 67).

"To the extent that Respondent seeks to focus instead on air monitoring and argues that clean air samples constitute compliance with Sections 61.145(c)(3) and 61.145(c)(6)(i), respondent is wrong." *In the Matter of First Capital Insulation, Inc.*, 1998 EPA ALJ LEXIS 59, *14-15 (E.P.A. July 28, 1998).

Such is the case here.

AFFIRMATIVE DEFENSE 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 no[t] conf[o]rm [to] applicable laws and violates Respondent['s] constitutional rights against ex post facto application of legal consequences to Respondent's actions." (CX 176 p. 5, ¶ 5; CX 177 p. 13).

The complaint is not time barred. As required by CAA Section 113(d), 42 U.S.C. § 7413(d), Complainant sought and obtained from the Department of Justice ("DOJ") a waiver of Section 113(d)'s 12-month time limitation on initiation of an administrative action for the accrued violations. *See* CX 7; *see also* CX 5-6. Respondent asserts that the waiver granted by DOJ to EPA pursuant to Section 113(d) "does no[t] conf[o]rm [to] applicable laws." However, Respondent provides no evidence whatsoever to support its assertion.

Additionally, Respondent's assertion regarding violation of its "constitutional rights against ex post facto application of legal consequences to [its] actions" is also without merit. The ex post facto bar operates against criminal laws and, as such, is inapplicable in the instant proceeding. *See i.e. Calder v. Bull*, 3 U.S. 386 (1798); *Beazell v. Ohio*, 269 U.S. 167 (1925); *see also Peugh v. United States*, 569 U.S. 530 (2013); *Landgraf v. USI Film Products*, 511 U.S. 244 (1994); *Artukovic v. INS*, 693 F.2d 894 (9th Cir. 1982) (upholding the validity of non-criminal legislation with a retroactive effect); *United States v. Kairys*, 782 F.2d 1374 (7th Cir. 1986), cert denied, 476 U.S. 1153 (rejecting an ex post facto challenge to a statutory revision with retroactive consequences in a civil proceeding).

AFFIRMATIVE DEFENSE 6: "EPA lacks jurisdiction over a program already delegates [sic] to the Department of Natural and Environmental Resources of the Government of Puerto Rico." (CX 176 p. 5-6, ¶ 6; CX 177 p. 13).

Respondent's representation is false. The Asbestos NESHAP, promulgated pursuant to Section 112 of the CAA (Hazardous Air Pollutants), 42 U.S.C. § 7412, is directly enforceable by EPA. *See* 42 U.S.C. § 7412 (l)(7) (Authority to Enforce)("Nothing in this subsection shall prohibit the Administrator [of the EPA] from enforcing any applicable emission standard or requirement under this section."); *see also* 40 C.F.R. § 63.90 (d)(2) (Approval of State Programs and Delegation of Federal Authorities) ("Nothing in this subpart shall prohibit the Administrator from enforcing any applicable rule, emission standard or requirement established under section 112").

AFFIRMATIVE DEFENSE 7: "Respondent does not waive its constitutional right for equal protection under the laws and equal application of legal and regulatory requirements." (CX 176 p. 6, ¶ 7; CX 177 p. 13).

This general statement, devoid of factual or legal content or support, does not appear to be an affirmative defense, so Complainant is not addressing it herein.

*[*Complainant addresses the following statements by Respondent through a singular response,*

tracking the Affirmative Defense section of Respondent's Amended Answer, which lists them together.] (CX 176 p. 6, ¶ 8).

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AFFIRMATIVE DEFENSE 8: "There has been no actual harm, imminent of substantial endangerment to the public of the environment from Respondent's activities at the site. On the contrary, the benefits to the environment resulting from the work performed by Respondent, it has abated more than 11,000 cubic yards of ACM from an area of 10 acres within the 800 acres of the Petrochemical Complex.

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 a cleaner air and a healthy economy." (CX 176 p. 6, ¶ 8) (CX 177 p. 13-14).

Actual harm and/or imminent or substantial endangerment to the public are not elements of the violations alleged in the instant case. Rather, the Asbestos NESHAP regulations impose strict liability for violating any of the work practice standards. *See Sealtite Corp.*, 739 F. Supp. at 468; *Ben's Truck & Equip., Inc.*, 1986 U.S. Dist. LEXIS 25595, at *8; *see also In re Echevarria*, 5 E.A.D. at 633. Liability is established when the EPA shows that the work practice standards of the applicable Asbestos NESHAP regulations have not been satisfied. *See MPM Contractors, Inc.*, 767 F. Supp. at 232*; In re Echevarria*, 5 E.A.D. at 633. Additionally, even assuming, *arguendo*, that actual harm was relevant to either liability or penalty in the instant case, Respondent offers no proof that actual harm has not, in fact, occurred.

Notably, as Complainant imagines Respondent is well-aware, and as Complainant's toxicologist expert will testify, harm from asbestos exposure is often not realized until years after initial exposure. Therefore, for those who ultimately suffer health consequences associated with asbestos exposure—for example, lung cancer, mesothelioma, and/or asbestosis—actual harm can be viewed as occurring at the point of inhalation exposure, the likelihood of which is increased by failure to follow work practice standards.

Respondent maintains that it has removed 11,000 cubic yards of ACM from the work site. However, Complainant again stresses that the quantity of ACM Respondent maintains it abated at the work site does not absolve Respondent from liability for abatement work performed in violation of the Asbestos NESHAP work practice regulations.

Respondent attempts to minimize its violations by representing to the Tribunal that "the waste ACM that was noticed by the asbestos NESHAP Inspector during the June 30, 2021 inspection added up to 1 cubic foot, that is, 0.04 cubic yards of ACM . . . [and that] the counts regarding this 0.04 cubic yards of ACM lack reasonableness and adequate justice, compared to the 11,000 total removed by Homeca." First, it is unclear to Complainant where Respondent derived its 0.04

cubic yard estimate for "the waste ACM that was noticed by the Asbestos NESHAP inspector." During the June 30, 2021 inspection, marking flags were placed at 31 locations where potential ACM material was visually observed. (CX 72-142). The Asbestos NESHAP inspectors collected samples of material at 9 of the flagged locations. Of the 9 samples taken by Complainant that were sent to the laboratory for testing, 7 tested positive for asbestos—specifically either chrysotile or amosite—and in amounts ranging from 65% to 85%. (CX 146). Respondent neither collected samples nor requested split samples of the samples collected by the EPA inspectors during the June 30, 2021 inspection. To put into perspective the amount of material left behind, just one of these seven positive samples alone was collected from "20 to 25 feet of unabated pipes with insulation still attached." (CX 71).

Even assuming, *arguendo*, that the amount of ACM *left behind* by Respondent was "small" (it was not) following Respondent's removal of 11,000 cubic yards of ACM, as it maintains in its response, as long as the threshold amount is present to establish applicability of the Asbestos NESHAP, as clearly evident in the instant proceeding, the Asbestos NESHAP regulations provide no defense for liability for purportedly "small" amounts of asbestos subsequently handled improperly.

Additionally, Respondent fails to mention the violations alleged stemming from the July 31, 2019 inspection—wherein the Asbestos NESHAP inspector discovered unlabeled bags of dry ACM piled in four different 40 cubic-yard containers, during which 12 samples were taken, *all* of which were determined by laboratory testing to be ACM—containing either chrysotile or amosite—in amount ranging from 55% to 80%—well above the 1% threshold for applicability of the Asbestos NESHAP regulations. (CX 67).

Respondent's violations are serious—with potentially catastrophic consequences to human health. Despite Respondent's contention otherwise, Complainant's proposed penalty, calculated in accordance with CAA Section 113(d) and (e) and the guidance provided by U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy, dated October 25, 1991 ("CAA Penalty Policy"), and Appendix III thereto ("Asbestos Penalty Policy"), revised May 11, 1992, is both reasonable, adequate, and advances public policy—specifically safeguarding both public health and the environment. *See* CX 154 p. 4 (Asbestos Penalty Policy)("Since asbestos is a hazardous air pollutant, the penalty policy generates an appropriately high gravity factor associated with substantive violations (i.e., failure to adhere to work practices . . .))."

AFFIRMATIVE DEFNESE 9: "There is no substantial evidence, as this term is defined under applicable case law, which supports the conclusion and proposed penalties in this case." (CX 176 p. 6, ¶ 9; CX 177 p. 14)

Contrary to Respondent's assertion, there is no substantial evidence burden imposed by the Rules of Practice. The appropriate evidentiary standard of proof in the instant proceeding is the preponderance of the evidence standard, meaning that degree of proof which is more probable than not. *See* 40 C.F.R. § 22.24(b) ("Each matter of controversy shall be decided by the Presiding Officer upon a preponderance of the evidence.")

Complainant maintains that its evidence fully supports a finding that Complainant satisfied its evidentiary burden in this proceeding.

AFFIRMATIVE DEFENSE 10: "The findings of fact in the Complaint regarding [sic] were premature, as Homeca was in the process of conducting its work in progress. Thus, conclusions based [sic] thereon are not ripe. Contrary to Complainant's allegations, this procedure was not precluded by the Work Plan, is reasonable under the particular circumstances of this project, respond to the ways and means followed by Respondent." (CX 176 p. 6, ¶ 10; CX 177 p. 14).

Complainant is unable to ascertain what, specifically, Respondent is referencing through this statement as Respondent fails to explain/elaborate in any discernible way in its prehearing exchange response which "findings of fact" were purportedly premature, what "work in progress" Respondent was purportedly in the process of conducting, which "procedure" it was conducting that "was not precluded by the Work Plan," and what "ways and means" Respondent purportedly followed that would absolve Respondent from liability for the Asbestos NESHAP violations, as Respondent seemingly is suggesting.

Complainant does stress, however, that whether or not Respondent was conducting its purported "work in progress," whatever it may mean by this term, this does not relieve Respondent of its obligation to comply with the Asbestos NESHAP work practice requirements—that is, i.e., to ensure that all ACM be adequately wet and ensure it remains wet until collected; to ensure that the material is adequately wet and sealed in leak tight bags while wet; and to ensure that all bags of ACWM were properly labeled.

In Respondent's Amended Answer, it makes the following statements in response to the Findings of Fact set forth in the Amended Complainant pertaining the Asbestos NESHAP inspector's observations during the July 31, 2019 inspection: ". . . [t]he 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."

If Respondent believes that following the Asbestos NESHAP work practice regulations means bagging bone-dry ACM in unlabeled bags; then subsequently allowing the accumulation of those unlabeled bags of dry ACM in 40 cubic yard containers; only for the bags to then be removed from the container, reopened (with workers then re-exposed to dry ACM), then re-bagged, wetted, and finally labeled and re-containerized for offsite disposal, Respondent is grossly mistaken. *See i.e., Chippewa Hazardous Waste, Inc. v. Commonwealth of Pennsylvania*, 2004 Pa. Envirn. LEXIS 24, *12-13 (discussing labeling requirements) ("[I]f there is a container of asbestos-containing waste and that container is to be transported off-site at *any* time, the container needs to be labeled at *all* times. It is as simple as that. It is not acceptable for the container to sit around for an indefinite period of time with no identification so long as it is eventually labeled before leaving the site. In short, even if there were proof that [Respondent's] bags were relabeled before transport, that fact would not excuse the violation that was observed…"); *see also* September 8, 2015 Work Plan, CX 13 p. 7, ¶ e) ("ACWM will be placed in asbestos labeled bags and/or containers and disposed as asbestos containing material . . . ACM

will be kept wet and loaded into either a leak tight container or leak tight wrapped containers per [the] [A]sbestos NESHAP."); CX 13 p. 10 (Section 4.1 ¶ b) ("All activities will be conducted in compliance with all applicable Asbestos NESHAP regulations in all phases of the work to be conducted at the Work Area so as to prevent any release of asbestos into the environment.").

AFFIRMATIVE DEFENSE 11: "There are intervening causes from other asbestos sources, including naturally occuring asbestos in the area and ACM falling debris from other petrochemical facilities in the area." (CX 176 at pg. 6, ¶ 4; CX 177 p. 14-15).

Respondent fails to explain how any such other purported "asbestos sources, including naturally occuring asbestos" alleged to be present in the area and "ACM falling debris from other petrochemical facilities in the area" have any bearing on Respondent's failure to comply with the work practice requirements for its renovation and abatement activities at the work site, as well as Respondent's failure to comply with the administrative compliance order and accompanying work plan for its work conducted at the site. *See* CX 13 p. 11-12 (Section 4.3 "Other ACM") ("All other ACM, if found, shall be handled following the Asbestos NESHAP regulation."); CX 13 p. 15 ("Phase III: Soil Removal, Replacement and Concrete Surface Cleanup") ("The purpose of Phase III is to remove from the Work Area any ACM that may have fallen onto the ground and the concrete surface areas by removing and replacing the surface of the bare-exposed soil and vacuum cleaning the hard concrete surfaces.").

AFFIRMATIVE DEFENSE 12: "Respondent reserves the right to use and raise other affirmative defenses, such as that of latches, violation of due process, estoppels, lack of jurisdiction over the subject matter and person, during the discovery procedures." (CX 176 p. 6, ¶ 12; CX 177 p. 15).

Respondent's reservation is not an affirmative defense, so Complainant does not address this statement herein.

VIII. COMPLAINANT'S RESPONSE TO RESPONDENT'S SECTION 3(C) FACTUAL INFORMATION RESPONDENT CONSIDERS RELEVANT TO THE ASSESSMENT OF A PENALTY AND SUPPORTING DOCUMENTATION

Section 3(C) of Judge Wright's prehearing order requires Respondent to provide, as part of its prehearing exchange, "all factual information Respondent considers relevant to the assessment of a penalty and any supporting documentation."[8]

In its response, Respondent represents that it "spent over $3 million addressing the asbestos contamination" in the petrochemical complex and that "[t]he money and work executed by

[8] Here too, like Section 3(B) of Respondent's Prehearing Exchange, Respondent provides a list of exhibits purportedly in support of its response with no discernible explanation whatsoever for how they support and/or are relevant to Respondent's response thereby making it nearly impossible for Respondent to substantively respond in the instant Rebuttal. While Complainant attempts to address Respondent's statements, Complainant again stresses that it does not agree with any unexpressed argument Respondent believes it has preserved with its general reference to its exhibits.

Respondent over a span of over 10 years and the success in cleaning the Work Area by Respondent should not be chastised by Complainant, but rather encouraged for additional and future projects, which are so badly needed." (CX 177 p. 15). Complainant again stresses that Respondent, by undertaking asbestos abatement work, has a responsibility, and is required, to comply with the Asbestos NESHAP work practice requirements—requirements crucial to ensuring the protection of human health and the environment. Respondent states that it has been involved in cleanup at the Work Area "over a span of over 10 years." *Id*. It follows then that Respondent should have been well-aware of its work practice obligations under the Asbestos NESHAP.

Respondent appears to conflate Complainant's role in enforcing the laws enacted to protect human health and the environment with what it characterizes as "chastis[ing]" by Complainant for work it completed improperly. *Id*. Again, Respondent has an obligation to comply with the laws enacted to safeguard human health and protect the environment, and Complainant has an obligation to ensure enforcement of those laws. Respondent does not get a free pass for its noncompliance with the law merely because it spent money and undertook asbestos removal work at the petrochemical complex.

Respondent argues that "[i]n its assessment calculations [sic] Complaint fails to recognize that the expressed main purpose of 40 C.F.R. § 61.145(c)(3)(i)(B)(1) is to prevent visible emissions to the outside air" and, as a result, "it is reasonable to conclude that there is no gravity to the alleged work performed." *Id*. In support of this assertion, Respondent states that "the air monitoring data shows that there is no gravity associated with this main purpose of the regulation." However, Complainant is not seeking a penalty for violation of 40 C.F.R. § 61.145(c)(3), so Complainant is unclear why this regulation is being referenced as relevant to the instant penalty assessment. (CX 174, Section 2(E)).

Notwithstanding, and as discussed, *supra*, at Section VI, Complainant again notes that Respondent's reliance on air monitoring results to refute its liability is misplaced. *See Ben's Truck & Equip., Inc.*, 1986 U.S. Dist. LEXIS 25595, at *12; *see also MPM Contractors, Inc.*, 767 F. Supp. at 234; *In the Matter of First Capital Insulation, Inc.*, 1998 EPA ALJ LEXIS 59, *14-15 (E.P.A. July 28, 1998).

Lastly, Respondent states that "[t]he environmental benefits surpass the environmental condition of the region." (CX 177). Respondent provides a list of exhibits it purports support this statement. As drafted, and upon review of Respondent's cited-to documents, Complainant is unable to discern what Respondent means by this statement as well as its relevance to Complainant's penalty assessment in the instant case.

Complainant's proposed penalty in the instant case was determined in accordance with Section 113 of the CAA, 42 U.S.C. § 7413; 40 C.F.R. Part 19; the guidance provided by the CAA Penalty Policy and the Asbestos Penalty Policy; and the memorandum "Amendments to EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2022) and Transmittal of the 2022 Civil Monetary Penalty Inflation Adjustment Rule" issued by EPA, dated January 12, 2022 ("2022 Inflation Memo") yielding a proposed calculated penalty that Complainant, at the

time of its filing of the Amended Complaint,[9] determined to be both appropriate and consistent with the evidence and the CAA.

IX. COMPLAINANT'S RESPONSE TO RESPONDENT'S SECTION 3(D) INABILITY TO PAY NARRATIVE STATEMENT, FACTUAL AND LEGAL BASES AND DOCUMENTS TO RELY ON

Pursuant to Section 3(D) of the Prehearing Order, "if Respondent takes the position that the proposed penalty should be reduced or eliminated on any grounds, such as inability to pay, then provide a detailed narrative statement explaining the precise factual and legal bases for its position and a copy of all documents upon which it intends to rely in support of such a position."

Complainant's response to Respondent's Section 3(D) is twofold. First, Complainant will address Respondent's narrative statements and response as set forth in Respondent's Prehearing Exchange. Second, Respondent will discuss the conclusion reached by Complainant's expert financial consultant following its ability-to-pay analysis. (CX 179).

1) Respondent's Narrative Statement

Respondent frames its response to Section 3(D) of the Prehearing Order as Respondent's "inability to pay narrative statement, factual and legal bases and documents to rely on." Complainant notes that Respondent's alleged inability-to-pay argument, raised in Respondent's April 26, 2024 Prehearing Exchange submittal, appears to be the only ground under which Respondent is suggesting the penalty be reduced.

In its narrative response, Respondent represents that its net income for the past year has been $206,363. Respondent also states that its operations "are directly affected by external influence," "the fluctuation in prices in the secondary market for recycled materials," and "by Worldwide events that directly affect market conditions for the recycled materials." (CX 177). As such, Respondent claims that its "ability to pay is fragile and can deteriorate more so at any moment." *Id*. Complainant notes that the possibility that at some unknown point in the future Respondent may be unable to pay the proposed penalty is not in itself a sufficient defense to a present ability to pay. For example, following Respondent's line of logic, the inverse then could also be said—that market conditions could improve at any moment such that Respondent's ability-to-pay could also increase.

Respondent also cites to *U.S. v. Midwest Suspension and Brake*, a Sixth Circuit case, where, as asserted by Respondent "the Court confirmed a 25% of Defendant Midwest's net income for the previous year to be sufficient to deter future violations and punish Midwest." (CX 177). *See U.S. v. Midwest Suspension and Brake*, 49 F.3d 1197, 1205 (6th Cir. 1995). Respondent states that it "understands that this Circuit Court decision is persuasive in the instant case." (CX 177).

[9] [redacted]

Through this statement, Respondent appears to imply that it believes that 25% of Respondent's purported past year net income of $206,363 would be an appropriate penalty. This would amount to a penalty in the amount of $51,500. Notwithstanding what appears to be Respondent's statement on the appropriateness of a penalty of at least $51,500, Respondent provides no additional explanation in its response as to why it believes such a penalty determination is appropriate and/or should be assessed in the instant proceeding. Complainant highlights that the Court in *Midwest* merely determined that the District Court had not abused its discretion in affirming the penalty assessment against Defendant-Midwest based on the particular facts and circumstance of that case. Additionally, based on Complainant's review of the cases citing to *Midwest* to date, Complainant could not discern any other case appearing to apply any such 25% net income penalty assessment.

2) **Complainant's Evaluation of Respondents Inability-to-Pay Claim**

Upon receipt of Respondent's inability-to-pay claim on April 26, 2024, Complaint promptly engaged the assistance of its financial expert and consultant, IEc, in evaluating Respondent's claim. Between May 9 and August 6, 2024, Complainant requested and Respondent provided the majority of the documentation sought by Complainant's consultant for the completion of its assessment.[10] On August 6, 2024, Complainant received IEc's final ability-to-pay analysis report. (CX 179). [redacted]

RESERVATIONS

Complainant makes the aforementioned statements in response to Respondent's Prehearing Exchange. These statements are a summary of the responses Complainant intends to provide in this proceeding, and this summary is not intended to be a complete response. Complainant further reserves the right to amend and/or supplement its response.

RESPECTFULLY SUBMITTED this 9 day of August 2024.

[10] *See* CX 179 (August 6, 2024 IEc Ability-to-Pay report) (providing a complete list of documents evaluated as well as notes on information requested but not obtained and/or timely provided by Respondent as of the date of the report finalization).

EVELYN RIVERA-OCASIO Digitally signed by EVELYN RIVERA-OCASIO Date: 2024.08.09 20:01:30 -04'00'

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