

**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 UNOPPOSED  
MOTION FOR AN EXTENSION OF  
TIME ON THE REMAINING  
PREHEARING FILING DEADLINES

**COMPLAINANT'S UNOPPOSED MOTION FOR AN EXTENSION OF TIME ON THE  
REMAINING PREHEARING FILING DEADLINES**

COMES NOW, the United States Environmental Protection Agency ("EPA" or "Complainant"), pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Part 22"), 40 C.F.R. § 22.16(a), and respectfully submits this motion for an extension of time on the remaining prehearing filing deadlines set forth in Honorable Michael B. Wright's April 9, 2024 Order. Complainant sought the consent of Respondent prior to filing this motion, and Respondent affirmatively agrees to the relief sought herein.

1. On April 9, 2024, following the submission of separate motions by both parties, Judge Wright issued an Order granting both parties' motions and extending the prehearing deadlines as follows: 1) April 24, 2024 for submission of Respondent's Prehearing Exchange; 2) May 24, 2024 for submission of Complainant's Rebuttal Prehearing Exchange; and 3) July 24, 2024 for the submission of any dispositive motions.

2. On April 24, 2024, Respondent submitted its Prehearing Exchange (“Prehearing Exchange”).<sup>1</sup>
3. In its Prehearing Exchange, Respondent claimed an inability to pay the penalty proposed in the instant proceeding.
4. 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, in evaluating Respondent’s claim.
5. On May 9, 2024, Complainant requested the following documents from Respondent to support Complainant’s evaluation of Respondent’s inability to pay claim:
  - a. Copies of Respondent’s final signed tax returns, including all schedules and attachments that were filed for the last five years (including the fiscal year that ended June 30, 2023);
  - b. Respondent’s audited financial statements (full and complete) for the fiscal years that ended June 30, 2019 through 2022;
  - c. Respondent’s internal financial data for the current fiscal year to date (July 1, 2023 to April 30, 2024), including an income statement (a profit and loss statement); a balance sheet as of the beginning and the end of the period; and a cash flow statement if prepared; and
  - d. If available, Respondent’s financial projections for the current and next fiscal year (years ending June 30, 2024 and 2025).

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<sup>1</sup> Complainant notes that following Respondent’s submission of its prehearing exchange, it submitted a redacted prehearing exchange and updated exhibit list and, most recently, a supplement to its prehearing exchange which included a revised redacted RX 19 and the addition of RX 26 and RX 27. For purposes of the instant motion, Complainant is excluding a detailed recitation of the procedural history of this case as it believes Respondent’s inability to pay claim as raised in its prehearing exchange and the subsequent events related to Complainant’s efforts to evaluate that claim to be most pertinent to the relief sought herein.

6. On May 17, 2024, Respondent submitted to Complainant financial documentation in response to Complainant's request, while noting that it did not have the financial projections for the current and next fiscal year, but that it had requested its accounting firm prepare the projections.
7. On May 20, 2024, following Industrial Economics' preliminary review of Respondent's May 17, 2024 document submittal, Complainant notified Respondent that its submission of its internal financial data for the current fiscal year to date were incomplete, and that the financial projections for 2024 and 2025 were still to be submitted.
8. On May 20, 2024, in response to Complainant's follow-up request, Respondent notified Complainant that its accountant would be out of office through May 27, 2024. Complainant requested that Respondent provide an estimate as to when it expected to be able to provide the remaining documents, to which Respondent stated that its accountant estimated he would be able to provide the information during the first week of June. Recognizing Complainant's obligation to comply with its prehearing rebuttal deadline, Respondent suggested the parties jointly move for an extension of the prehearing filing schedule.
9. Because Complainant's evaluation of Respondent's inability to pay claim is awaiting receipt of documentation from Respondent that is necessary for the completion of its inability to pay analysis, Complainant is unable to rebut or otherwise address Respondent's inability to pay claim as set forth in Respondent's Prehearing Exchange.
10. Industrial Economics has estimated it will need up to four weeks to prepare its analysis and expert report for Complainant provided that Complainant receives Respondent's complete requested financial documentation, and assuming further review from Industrial Economics does not require Respondent to provide additional information for the completion of its

assessment.

11. Based on the foregoing, and in consideration of Respondent's estimated timeline for provision of the requested financial documentation as well as Industrial Economics' current estimated timeline for completion of its analysis and expert report following receipt of Respondent's complete financial documentation, and further considering the possible impact that the outcome of the complete inability pay analysis may have on the progression of the pending litigation, Complainant moves, with Respondent's consent, pursuant to 40 C.F.R § 22.16(a), in order to respectfully request that the Tribunal vacate the remaining prehearing deadlines set forth in Judge Wright's April 9, 2024 Order and set forth the following new proposed prehearing filing schedule, agreed to by both parties:

- a. July 12, 2024 for Complainant to submit its rebuttal prehearing exchange;<sup>2</sup>
- b. July 26, 2024 for submission of a joint motion for the appointment of a neutral (if the parties agree to file such a motion); and
- c. September 20, 2024 for submission of any dispositive motions by either party.

12. Complainant reiterates that it sought Respondent's consent prior to its filing of the instant motion, and Respondent consents to the relief sought herein, as memorialized in the enclosed Stipulation.

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<sup>2</sup> Respondent has estimated it will have the additional requested documentation to Complainant by the first week of June. For purposes of proposing a new deadline, Complainant used June 7 as the estimated date for submittal of this information by Respondent. Accounting for the four-week estimate provided by Industrial Economics for production of its analysis and expert report, as well as time Complainant anticipates requiring to fully review the report and subsequently prepare its rebuttal prehearing exchange response, Complainant has proposed July 12 as the deadline for submission of its rebuttal prehearing exchange. The proposed deadlines for the joint motion for appointment of a neutral and dispositive motions were calculated utilizing the same time frames as set forth in the April 9, 2024 Order (14 days from the rebuttal deadline for submission of a joint motion for appointment of a neutral and 60 days from this date for submission of dispositive motions by the parties, if any).

13. Pursuant to 40 C.F.R § 22.7(b), “the Presiding Office may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative.”
14. Complainant’s extension request is timely given the facts and circumstances of the proceeding to date. Following Respondent’s inability to pay claim as asserted in its April 24, 2024 Prehearing Exchange, Complainant promptly sought the assistance of its outside contractor and financial expert in evaluating Respondent’s inability to pay claim.
15. On May 9, 2024, Complainant requested additional financial documentation from Respondent to support Complainant’s evaluation of Respondent’s inability to pay claim. On May 17, 2024, Respondent submitted documents to Complainant in response to Complainant’s request, while noting that it did not have certain information (the projections) but that it had requested they be produced. On May 20, 2024, following Industrial Economics’ preliminary review of Respondent’s May 17, 2024 document submittal, Complainant notified Respondent that its internal financial data for the current fiscal year to date were incomplete and requested that the missing information be provided along with the financial projections still to be submitted. Respondent informed Complainant that its accountant was out of town but estimated it would be able to provide the requested information by the first week of June. Following receipt of Respondent’s estimated timeline and after consultation with Industrial Economics regarding its estimate for its analysis and production of a report, Complainant promptly filed the instant motion.
16. Further, Complainant demonstrates good cause for the relief it is seeking. Specifically, Complainant does not presently have sufficient information to rebut Respondent’s inability to pay claim as set forth in Respondent’s Prehearing Exchange and therefore requires additional

time to prepare and submit a complete Rebuttal Prehearing Exchange. Complainant's proposed prehearing filing schedule is a good faith estimate based on Respondent's projected timeline for receipt of the additional information and Industrial Economics' present estimate for production of its analysis and expert report. Further, the parties have both agreed there are bona fide litigation reasons to extend the deadlines.

17. Complainant notes that the outcome of its ability to pay analysis could significantly alter the future progression of this proceeding. For example, as the parties have stipulated, there is a "possibility that evaluation of Respondent's financial documents might result in a negotiated settlement being quickly effected (saving both time and resources on behalf of both the Complainant and Respondent)."
18. Lastly, Complainant's proposed extension request does not prejudice Respondent as Complainant consulted with Respondent regarding the dates proposed, and Respondent consented to Complainant's proposed schedule, as memorialized in the enclosed Stipulation.
19. Furthermore, Complainant asserts that its proposed extension request 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"). Granting the relief sought herein, allows Complainant proper opportunity to present its case while also ensuring Complainant is able to provide due consideration of information not yet available that has the potential to significantly impact Complainant's decision-making and path forward.
20. Complainant respectfully avers that the additional time it seeks should not, in its estimation, 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 Complainant believes the extensions proposed are reasonable based on the circumstances presented.

21. For the foregoing reasons, Complainant respectfully requests that this Tribunal issue an Order granting Complainant's unopposed motion seeking to extend the prehearing filing deadlines set forth in Judge Wright's April 9, 2024 Order to those proposed by Complainant, and agreed to by Respondent, in paragraph 11 of the instant motion, and as memorialized in the enclosed Stipulation, and granting such other and further relief as the Tribunal deems just and proper.

RESPECTFULLY SUBMITTED this 22 day of May 2024.

Evelyn Rivera-Ocasio  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
City View Plaza II, Suite 700  
48 Rd 165 Km 1.2  
Guayanabo, PR 00968  
Phone: 787-977-5899  
Email: [Rivera-Ocasio.Evelyn@epa.gov](mailto:Rivera-Ocasio.Evelyn@epa.gov)

Sara Amri  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, NY 10007  
Phone: 212-637-3167  
Email: [Amri.Sara@epa.gov](mailto:Amri.Sara@epa.gov)