

**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 RESPONSE TO
RESPONDENT’S MOTION(S) FOR
LEAVE TO FILE PREHEARING
EXCHANGE OUT OF TIME AND
CROSS-MOTION FOR EXTENSION OF
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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 (b), and submits this response to Respondent’s “Motion for Leave to File Prehearing Exchange Out of Time” and Respondent’s “Request for Authorization to File Prehearing Exchange Out of Time”¹ and cross-motion. Complainant sought the consent of Respondent prior to filing the instant cross-motion, and Respondent does not oppose the relief sought herein.

¹ Complainant notes that while Respondent filed two motions, they appear to seek substantively the same relief.

1. On January 19, 2024, the Honorable Administrative Law Judge, Michael J. Wright, issued a Prehearing Order (“January 19, 2024 Prehearing Order”) in the instant matter which set forth, among other requirements, certain prehearing filing deadlines, including for the filing of Complainant’s initial prehearing exchange by March 1, 2024, Respondent’s prehearing exchange by March 22, 2024, and Complainant’s rebuttal exchange by April 5, 2024. The January 19, 2024 Prehearing Order further set forth timelines for either party’s filing of any dispositive motions and/or non-dispositive motions, as well as a joint motion for appointment of a neutral.
2. On March 1, 2024, Complainant timely filed its initial prehearing exchange.
3. On March 7, 2024, Complainant, on consent of Respondent, filed a motion to correct two (2) minor, non-substantive typographical errors identified in its complaint dated October 19, 2023, along with a stipulation, executed by both parties, memorializing the proposed typographical corrections.
4. On March 15, 2024, Judge Wright issued an Order (“March 15, 2024 Order”) granting Complainant’s request to correct the two errors identified in its complaint and ordering that Complainant file with the Tribunal and serve on Respondent, by no later than March 22, 2024, an amended complaint reflecting the proposed corrections, to become the governing complaint in the matter upon filing. Furthermore, the Order noted that Respondent may file an answer to Complainant’s amended complaint within 20 days from date of service of the amended complaint and, in the event Respondent were to elect not to file an answer to the amended complaint, provided that Respondent’s answer filed on December 5, 2023 would become the governing answer to the amended complaint.

5. On March 21, 2024, Complainant served on Respondent's counsel and filed with the Tribunal Complainant's amended complaint as directed the March 15, 2024 Order. Thus, if Respondent were to file an answer to the amended complaint, it would have to be filed no later than April 10, 2024.
6. As of March 22, 2024, Respondent had not filed its prehearing exchange as the January 19, 2024 Prehearing Order directed.
7. On March 27, 2024, following the passing of Respondent's March 22, 2024 prehearing exchange filing deadline, Jennifer Almase, Attorney-Advisor for the Office of Administrative Law Judges, contacted Respondent via email, with Complainant cc'd, inquiring as to Respondent's failure to have filed its prehearing exchange by the deadline Judge Wright previously set, and informing Respondent that, given the passing of its prehearing exchange deadline, if Respondent intended to file its prehearing exchange, it would need to seek leave of the Tribunal to do so.
8. On April 2, 2024, Respondent filed a "Request for Authorization to File Prehearing Exchange Out of Time" and "Motion for Leave to File Prehearing Exchange Out of Time" informing the Tribunal of Respondent's intention to file an answer to Complainant's amended complaint by April 10, 2024, and requesting the Tribunal's authorization to file its prehearing exchange by April 24, 2024.
9. Complainant now submits this response, pursuant to 40 C.F.R. § 22.16 (b), in order to inform the Tribunal that it does not oppose Respondent's April 2, 2024 motion(s) or the relief sought therein.
10. However, given Respondent's failure to timely submit its prehearing exchange, which renders Complainant's compliance with its April 5, 2024 deadline for submission of its

rebuttal exchange an impossibility, and, further, sets back the entire prehearing litigation schedule at least four weeks, Complainant cross-moves, pursuant to 40 C.F.R § 22.16(a), in order to respectfully request that the Tribunal vacate the April 5, 2024 deadline set forth in the January 19, 2024 Prehearing Order for submission of Complainant's rebuttal exchange and set forth the following new proposed prehearing filing schedule, agreed to by both parties:

- a. May 24, 2024 for Complainant to 1) supplement its initial prehearing exchange based on Respondent's amended answer if Complainant determines such supplement is needed and 2) submit its rebuttal prehearing exchange in response to Respondent's prehearing exchange which Respondent has proposed to file by April 24, 2024.
- b. June 7, 2024 for submission of a joint motion for the appointment of a neutral (if the parties agree to file such a motion).
- c. July 23, 2024 for submission of any dispositive motions by either party.²

11. Complainant reiterates that it sought Respondent's consent prior to its filing of the instant cross-motion, and Respondent consents to the relief sought herein.

12. 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."

13. In the instant case, Complainant submits its cross-motion and extension request as expeditiously as possible given the current facts and circumstances—only two days after

² Complainant is particularly concerned with the timeframe for dispositive motions as the issues presently in contention, which would need to be resolved through a formal hearing, might be greatly reduced through 40 C.F.R. § 22.20 motion practice. Complainant also separately notes that the January 19, 2024 Prehearing Order provides a timeline for submission of all non-dispositive motions—no later than 60 days prior to the scheduled hearing date. As Complainant is not, at this time, and based on current circumstances, proposing to adjust this timeline, reference to non-dispositive motions is excluded from Complainant's proposed prehearing filing schedule.

Respondent filed its “Request for Authorization to File Prehearing Exchange Out of Time” and “Motion for Leave to File Prehearing Exchange Out of Time” with the Tribunal.

14. Further, Complainant demonstrates good cause for the relief it is seeking. Specifically, Complainant’s inability to comply with the April 5, 2024 rebuttal exchange deadline set forth in the January 19, 2024 Prehearing Order is through no fault of Complainant’s own and due to circumstances entirely out of Complainant’s control. Respondent failed to timely submit its prehearing exchange and, as such, Complainant is incapable of providing its rebuttal exchange to the Tribunal as there is nothing to rebut at this present time. Furthermore, as previously noted, Respondent’s delay in submitting its prehearing exchange also impacts the entire prehearing filing schedule. Complainant, following receipt of the January 19, 2024 Prehearing Order, organized various work and personal obligations around the dates set forth in the Order as well as in consideration of the timeframes sets forth for the filing of prehearing motions. As the original filing dates are now impacted, Complainant’s proposed schedule factors in its now pre-existing obligations.
15. 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.
16. 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.

17. 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.
18. For the foregoing reasons, Complainant respectfully requests that this Tribunal issue an Order granting Complainant's cross-motion seeking to vacate the April 5, 2024 deadline set by the January 19, 2024 Prehearing Order for submission of Complainant's rebuttal exchange and, further, extending the prehearing filing deadlines to those proposed by Complainant, and agreed to by Respondent, in paragraph 10 of the instant cross-motion.

RESPECTFULLY SUBMITTED this 4th day of April 2024.

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