

**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)

Docket No. CAA-02-2024-1201

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

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THE REMAINING PREHEARING FILING DEADLINES**

COMES NOW Respondent Homeca Recycling Center Co., Inc. (hereinafter, “Homeca” or “Respondent”) through its undersigned counsel pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Rules of Practice”), 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 May 28, 2024 Order. Respondent sought the consent of Complainant prior to filing this motion, and Complainant affirmatively agrees to the relief sought herein.

1. On January 19, 2024, the Honorable Judge Wright set deadlines for certain prehearing procedures. Pursuant to that Order and a subsequent Order dated April 9, 2024, the parties filed their respective prehearing exchanges.

2. In Respondent’s prehearing exchange, it asserted that it lacks the ability to pay the penalty proposed in this proceeding. In response to such assertion, Complainant promptly engaged a financial expert to evaluate respondent’s position and requested a variety of financial information from Respondent to facilitate that analysis.

3. On May 17, 2024, Respondent provided some of the financial information requested by Complainant and worked, together with its outside accountant, on gathering and preparing the remainder of such information with the time schedule and goal of providing it by the first week of June. Specifically, the remainder information consists of:

(a) Respondent's complete internal financial data for the current fiscal year to date (July 1, 2023, to May 31, 2024), including an income statement (a profit and loss statement), plus a balance sheet as of May 31, 2024, and a cash flow statement; and

(b) Respondent's financial projections for the current and next fiscal year (years ending June 30, 2024, and 2025).

Collectively referred to hereinafter as "Remainder Information". Pertinent to this production of financial information is the fact that the fiscal year for Respondent is from July 1st to June 30th of each year, so the Remainder Information is not presently available, and instead, is being gathered.

4. On May 22, 2024, and due to the pendency of Respondent's production of the Remainder Information, Complainant filed an Unopposed Motion for an Extension of Time on Remaining Prehearing Filing Deadlines, to which it attached a Stipulation to Extend Prehearing Filing Deadlines. Complainant informed this Honorable Tribunal that to rebut or otherwise address Respondent's inability to pay claim, it needed the Remainder Information, thus, requested adoption of new proposed deadlines.

5. On May 28, 2024, the Honorable Judge Wright issued an Order extending the prehearing deadlines as follows:

July 12, 2024 Complainant's Rebuttal Prehearing Exchange

July 26, 2024 Any joint motion for appointment of a neutral

September 20, 2024 Any dispositive motions

6. On June 7, 2024, Respondent informed Complainant that it had not been able to complete the gathering and preparation of the Remainder Information because it had been experiencing problems with the accounting system of the company, mostly based on the large quantity of individual checks that are generated daily as part of the operation¹ and the reconciliation of bank accounts.

7. On June 11, 2024, the parties conferred about the schedule for the submittal of the Remainder Information and its impact on the prehearing deadlines in effect.

¹ As further described during conference between the parties' legal counsel, due to regulatory provisions promulgated by the Puerto Rico Police Bureau and the Puerto Rico Treasury Department, all payments made to people that collect and deliver metal scrap to Respondent's facilities must be made with checks after properly recordkeeping their identification and the origin of the material, among other requirements. These requirements apply to many individuals that informally salvage scrap metal, aluminum cans, communication and electrical cables, old vehicles, materials from construction debris, and the like, resulting in the daily generation of large quantities of individual checks as part of the individual transaction evidence required by the Police and Treasury. The applicable legislations and the regulations are intended to prevent and combat criminal activities, mainly stealing of metals.

Respondent informed Complainant that it will submit the Remainder Information by July 1, 2024. Once the Remainder Information is submitted, Complainant will require time to have its financial expert, Industrial Economics, prepare its analysis and report, assuming further review does not require Respondent to provide additional information for the completion of its assessment.

8. Notwithstanding the above regarding the Remainder Information, and with the mutual agreed intention of advancing this assessment, on June 11, 2024, Complainant notified Respondent of some specific information that its financial expert had already identified as necessary to complete its analysis. Respondent is currently gathering and preparing this additional information.

9. Based on the foregoing, and in consideration that Respondent has put forward its best efforts to gather and prepare the Remainder Information, the problems encountered in the process, and that Complainant will need extension of its deadlines to complete the analysis of all the financial information, and further considering the possible impact that the outcome of the inability to pay analysis may have on the progression of the pending litigation, Respondent moves, with Complainant's consent and pursuant to sections 22.7(b) and 22.16(a) of the Rules of Practice, to request that this Tribunal vacate the remaining deadlines set forth in Judge Wirght's Order of May 28, 2024 and set forth the following new proposed prehearing filing schedule, agreed to by both parties:

August 9, 2024	Complainant's Rebuttal Prehearing Exchange;
August 23, 2024	Any joint motion for appointment of a neutral; and
October 22, 2024	Any dispositive motions.

10. Respondent sought Complainant's consent prior to filing this motion and Complainant consents to the request and proposed prehearing filing schedule, as indicated in the enclosed Stipulation, made a part hereof for all pertinent purposes.

11. 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." Respondent's extension request is timely given the present facts and circumstances of the present exchange and review process, prior to the deadlines in Judge Wright's May 28, 2024 Order. In addition, good cause is evidenced by the fact that both parties have diligently procured the respective resources to complete the financial assistance to produce the required financial information and to complete the ability to pay analysis, and that both have maintained communication and coordination of efforts to advance this assessment effectively, for which an extension is needed. Undoubtedly, the outcome of this assessment could significantly alter the future progression of this proceeding, as there is a reasonable possibility that it might result in a negotiated settlement, saving time and resource to both parties.

12. Moreover, the proposed extension of prehearing deadlines does not prejudice the parties hereto as evidenced by the enclosed Stipulation.

13. Under See 40 C.F.R. § 22.4(c)(10) 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”. Respondent respectfully understands that the proposed extension supports the efficient and fair resolution of the instant case, giving the parties an opportunity to take into consideration the ability to pay and avoid costly litigation.

14. Respondent submits this motion in good faith and without any intent to unnecessarily delay the proceedings with the further understanding that these are at a relatively early stage where the extension does not cause major disruption to the position of the parties and their respective efforts in preparation for a hearing.

15. FOR ALL OF THE ABOVE, Respondent respectfully requests that this Honorable Tribunal issue an Order granting this unopposed motion and consequently, extend the prehearing filing deadlines set forth in Judge Wright’s Order of May 28, 2024 Order to those proposed herein, agreed to by Complainant, with such other and further relief as the Tribunal deems just and proper.

RESPECTFULLY SUBMITTED.

In Guaynabo, Puerto Rico, this June 14, 2024.

**Rafael
A. Toro
Ramirez**

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Ramirez
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Rafael A. Toro-Ramírez
TORO & ARSUAGA, LLC
Attorneys for Respondent
PO Box 11064, San Juan, PR 00922-1064
Tel. (787) 299-1100 Fax. (787) 793-8593
rtoro@toro-arsuaga.com

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BEFORE THE ADMINISTRATOR**

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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 RESPONDENT'S UNOPPOSED MOTION FOR AN EXTENSION OF TIME ON THE REMAINING PREHEARING FILING DEADLINES 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.

June 14, 2024

**Rafael
A. Toro
Ramirez**

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Ramirez
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Rafael A. Toro-Ramírez
TORO & ARSUAGA, LLC
Attorneys for Respondent
PO Box 11064, San Juan, PR 00922-1064
Tel. (787) 299-1100
Fax. (787) 793-8593
rtoro@toro-arsuaga.com