

**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 REDACTED
INITIAL PREHEARING EXCHANGE

RESPONDENT'S REDACTED INITIAL PREHEARING EXCHANGE

COMES NOW Respondent Homeca Recycling Center Co., Inc. ("Homeca" or "Respondent") through its undersigned counsel, and submits the following Prehearing Exchange as directed by the Administrative Law Judge, Honorable Michael B. Wright, in the Prehearing Order dated January 19, 2024, and in accordance with the provisions 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 ("Rules of Practice"), 40 C.F.R. 22.19(a).

Pertinent Procedural Events

In compliance with the Prehearing Order, the parties engaged in a settlement conference on February 1, 2024, but no settlement was reached.

On March 1, 2024, the U.S. Environmental Protection Agency, Region 2 ("EPA" or "Complainant") filed Complainant's Initial Prehearing Exchange.

On March 20, 2024, EPA notified Homeca an Amended Complaint and Notice of Opportunity to Request a Hearing ("Amended Complaint").

On April 9, 2024, Honorable Judge Wright granted motions by Complainant and Respondent, and issued an extended prehearing schedule where, *inter alia*, Respondent is to file its Prehearing Exchange on or before April 24, 2024.

On April 10, 2024 Homeca filed an Answer to the Amended Complaint and requested a hearing, and within the schedule, submits herein its prehearing exchange.

Pursuant to Honorable Judge Wright’s April 9, 2024 Order, Respondent files the following Prehearing Exchange.

Respondent’s Prehearing Exchange Information

1(A) Witnesses

Respondent expects to call as witnesses the individuals listed below, whose testimony is expected to include, but may not be limited to, the matters summarized, in general, below.

Witness Name	Type of Witness	Summary of testimony
Melvin Feliciano	Fact	As Project Supervisor for the Tallaboa (“TIP”) Industrial Park Project will testify on the procedures followed for the execution of the Work Plan, including characteristics of the insulation, the working conditions, and equipment
Benjamín Cintrón	Fact	As Project Manager for the TIP Project will testify on the procedures followed to comply with Work Plan and NESHAP, the equipment used, the monitoring and any other means and methods followed. Also, will testify on the information provided during EPA inspections.
Jorge Velázquez	Fact	As Project Manager for the TIP Project will testify on the procedures followed for the removal of ACM, the equipment used, the monitoring and any other means and methods followed.
Lynette Correa	Fact	As Environmental Department Manager will testify on the compliance with applicable NESHAP and other requirements, permits, monitoring, recordkeeping and others applicable to the ACM removal, transportation, and disposal.
Eduardo Ramos	Fact	As General Manager will testify on the overall scope of the TIP Project, prior Homeca projects, the background information on the CORCO Petrochemical Complex, including PR Olefins

Witness Name	Type of Witness	Summary of testimony
		where TIP is located, the existing conditions, other ACM demolition projects at TIP, the Work Plan and overall compliance of Homeca with applicable regulatory requirements, including NESHAP, and Homeca income statements.
José J. Reyes	Fact	As third party and analytical laboratory (ALTOL) will testify on the procedures followed for removal of ACM, monitoring and samples collected.

Respondent reserves the right to revise and/or supplement the matters about which each witness may testify, and their presentation for rebuttal purposes. Also, reserves the right to announce additional witnesses to be able to respond to Complainant's rebuttal arguments.

Respondent anticipates that it will be able to stipulate many of the documents to be used as documentary evidence in this case. In the event that it may be necessary for certain evidentiary documents, Respondent reserves the right to present the testimony of the record custodian or other witnesses, which may appear in-person, remotely by video, or in written form, for the purpose of establishing the nature and scope of the documents.

Respondent does not anticipate the need to present expert witness as it understands that the applicable NESHAPs requirements and other regulatory requirements that are applicable to the proper removal, transportation, and disposal of ACM, are matters for which the parties can request the Honorable Judge Wright to take official notice pursuant to Rules of Practice, 40 CFR §22.22(f). Respondent reserves the right to call expert witness if expert opinions are to be used by Complainant, which as of present no expert opinion has been produced.

1(B) Exhibits

Respondent anticipates offering into evidence the following documents, copies of which are annexed hereto, unless otherwise noted:

Respondent's Exhibit*	Description of Exhibit
RX 1	Photos of the Work Area at TIP
RX 2	Aerial photo of CORCO Petrochemical Complex
RX 3	Aerial photo of TIP and Work Area
RX 4	Photos of work performed inside Work Area

Respondent's Exhibit*	Description of Exhibit
RX 5	Aerial video of Work Area taken in 2021, after Respondent's work completed**
RX 6	Examples of ACM Abatement Permits issued by the state agency
RX 7	EPA-Weston Report on background asbestos
RX 8	Report on Other Sources of Asbestos Chrysotile Structures Along PR-2, dated July 2014, by The Atmospheric Assessment Group, and EPA's Technical Review dated November 6, 2014 by Chuck Nace, Environmental Toxicologist, EPA, Region II
RX 9	Analytical Environmental Services International, Inc. (AESI) Report of Initial Fingerprinting Related to Puerto Rico Olefin February 2015, by Ady Padan, Ph. D
RX 10	Presentation of Fingerprinting Report to EPA
RX 11	May 29, 2015 EPA letter on Initial Fingerprinting Findings, PR Olefin Site, Peñuelas, PR, by Chloe Metz, Chief, technical Support Section, Emergency and Remedial Response Division, EPA, Region 2
RX 12	July 10, 2015 US DOJ ENRD letter (CAMP)
RX 13	September 18, 2015 Work Plan (same as CX#13)
RX 14	October 2, 2015 EPA's Work Plan approval letter (same as CX#14)
RX 15	June 4, 2017 Environmental Wipe Sampling Assessment
RX 16	Transportation and Disposal Manifests for ACM from the TIP Project
RX 17	Daily Logs for the TIP Project
RX 18a	Air monitoring records for the TIP Project (pages 1 to 400)
RX 18b	Air monitoring records for the TIP Project (pages 401 to 600)
RX 18c	Air monitoring records for the TIP Project (pages 601 to 823)

Respondent's Exhibit*	Description of Exhibit
RX 19	Respondent's Income Statement 2023 (redacted)
RX 20	Photos for re-bagging activities after EPA July 31, 2019 inspection
RX 21	Notification for disposal of ACM after June 30, 2021 inspection
RX 22	Draft AOC and photos for the rest of the TIP site
RX 23	Removal Action Work Plan for rest of TIP site
RX 24	February 5, 2021 notification to EPA on completion of the Work Plan (same as CX 70)
RX 25	Tallaboa, Peñuelas Climate Temperature Data for July 2019

* Some exhibits had been previously labeled with exhibits numbers because they were used at different stages prior to this case and for unrelated purposes. There are others that were bated stamped with page numbers. These numbers are to be ignored, as the correct exhibit identification numbers for this case are those prefixed with "RX" and inserted at the bottom-right location on each page.

** The video could not be stamped with its RX 5 identification number.

*** Due to the size of the RX 18 electronic file which exceeds the file size limit, it had to be divided into three smaller files, identified as RX 18 a, 18b and 18c.

1(C) Time for Presentation of Direct Case, Interpreter and Location for Hearings

Respondent estimates that it will require two (2) days of direct presentation of evidence, including testimony and documentary evidence. This time will be directly dependent on the stipulation of documents. The following witnesses will require interpreter for Spanish language: Melvin Feliciano, Jorge Velázquez, Lynette Correa and José J. Reyes.

Respondent respectfully requests that pursuant to Rules of Practice in 40 CFR 22.19(d) and 22.21(d), the prehearing conference and the hearing be held in the county where Respondent conducts the business which the hearing concerns, that is, Tallaboa Ward in the county of Peñuelas, PR. Respondent can make the arrangements to have a room suitable to hold both hearings.

3 Additional Prehearing information

Pertinent Preamble

2009

In 2009 Respondent entered into an agreement with Tallaboa Industrial Park, LLC (TIP) owner of the site formerly known as Puerto Rico Olefins, a petrochemical complex, that had been abandoned and was in complete disarray for over three (3) decades, for the removal and recycling of the facilities as scrap metals.

Photos of the complex in RX 1 show the magnitude and challenge of the work to be performed at the TIP site. Most of the petrochemical facility contained asbestos containing material (ACM).

The ACMs consisted of the insulation material for pipes, tanks, distillation columns, boilers, heat exchangers and ancillary equipment. The conditions of the ACMs can be summed as partially dismantled, deteriorated, broken, and blown away by the passing of time, effect of the climate, including hurricanes, and absence of controls, maintenance or repairs.¹

It is specifically pertinent to note that the climate conditions in the Tallaboa Ward is characterized as being very dry, hot, and very windy, as it is close to the coast of the Caribbean Sea.

To remove the metal as scrap for recycling purposes, the ACM had to be removed.²

At TIP, the Work Area where Respondent conducted its project occupied approximately 10 acres within the larger TIP site of approximately 50 acres, which itself is part of the Commonwealth Oil Refining Company (“CORCO”) Petrochemical Complex that consists of eight (8) petrochemical plants that occupies some 800 acres. See aerial photos RX 2 and RX 3. The CORCO Petrochemical Complex was built in the 1950s and abandoned in the 1970s, after the OPEC embargo crisis of 1973.

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. The Work Area is the only one that was part of respondent’s ACM removal, where scrap metal was removed and the area readied for re-development.

¹ Respondent makes this clarification because the project was to achieve an improvement of the environmental conditions that existed at the site and this area in southern part of the Island, during all these years, as part of the government’s public policy to revitalize the region.

² Respondent is a contractor that has been in the scrap metal recycling business since early 1980s, including demolition projects where ACM abatement is necessary to clean, remove and recycle the scrap metal.

To remove the ACM, Respondent obtained all the permits that are required, meaning the permits issued by the PR Environmental Quality Board (EQB), now the Department of Natural and Environmental Resources (“DNER”). See examples in RX 6. Respondent provided the required notifications to the local EPA Office, that is, the Region 2 Caribbean Environmental Protection Division (CEPD). No EPA permits are required.

2013

During November 2013, there was a public visit and activity by the then Governor of Puerto Rico, together with the then EPA Regional Administrator for Region 2. The purpose was to announce that the petrochemical complex that had been abandoned for so long, was finally being renovated, starting at the TIP (PR Olefins), in order to facilitate future industrial activity, as part of the Government’s efforts to revitalize the economy. (Note that the local economy had been in recession since 2008).

After the Governor’s inauguration activity, Weston Solutions, Inc. (“Weston”), which is an EPA contractor, conducted several sampling activities in the region in late 2013 and early 2014. As a result thereof, Weston identified asbestos contamination in the local elementary school and Head Start, among other locations in the area close to the petrochemical complex.

2014

As a result of several Weston reports and press releases, Respondent entered into an Administrative Order on Consent (“AOC”) to clean-up asbestos fibers from the school and the Head Start. The AOC was signed in March 20, 2014 and executed by Respondent immediately, starting in April 2014, to have the school and Head Start ready for the August 1st, 2014 academic semester.

On January 2 and 3, 2014, Weston collected and analyzed wipe samples at background locations that extended some six (6) miles east and west of the TIP property. See RX 7. Copy of this report was not produced to Respondent until August 8, 2014, that is, after Respondent had completed the school and Head Start clean-ups and incurred in close to \$500,000 in direct expenses. The background Weston report, Figure 2, shows that the results had been available by January 6, 2014. Had Respondent been disclosed the results of this report which demonstrate that background samples exceeded the concentrations found in the school and the Head Start, there would not have been any need for the clean-up work at the school and the Head Start because concentrations in background locations were similar and even higher. Evidently, there was no need for EPA, Respondent and TIP to enter into the AOC, and Respondent would not have signed the AOC.

On February 5, 2014, that is, simultaneous with the AOC, EPA issued a Compliance Order under the CAA against Respondent and TIP alleging violations of NESHAP. Respondent and TIP filed a Petition for Judicial Review in the US Court of Appeal First Circuit, of the Compliance Order, which was referred to the Civil Appeals

Management Program (CAMP). As part of the CAMP, both matters, that is the AOC and the Compliance Order, were handled jointly.

During July 2014, TIP investigated other sources of asbestos fibers in the region. A report was prepared that identified other sources resulting mainly from brake pads of motor vehicles. See RX 8. A Technical Review memorandum was prepared by EPA in which it does not accept the conclusions of this document submitted by TIP. See also RX 8. Note that this memorandum locates the petrochemical complex to the northeast of the school, Head Start and community, while it is located to the northwest.

On August 1, 2014, Respondent finished the cleanup of the school and Head Start, which included analytical results that certified the cleanups in accordance with the work plan approved under the AOC.

In late 2014, EPA requested Respondent and TIP to cleanup several commercial and residential properties in the nearby community. Respondent and TIP negated responsibility and did not agree to clean up those properties, principally based on investigations conducted that showed other sources of asbestos in the area. The request was discontinued.

2015

In addition to the report on other sources of asbestos submitted by TIP, Respondent commissioned an investigation of naturally occurring asbestos in quarries and gravel used in the region, that is, the southwest region of the Island. The investigation found naturally occurring asbestos in quarries located in this southwest region and gravel extracted from these quarries and used all over the region. See RX 9. The report was submitted to EPA and presented in a meeting. See RX 10.

After the report presentation, EPA sent a letter to Respondent where it did not contradict or negate the findings of the report, but rather suggested that additional investigation be done. See RX 11. To the best of Respondent's knowledge, no additional investigation on the quarries with naturally occurring asbestos in this region has been done, no quarries have been closed and no investigation on the health risks and threats conducted.

The findings on these reports are consistent with the findings of asbestos in background samples contained in Weston's report, where properties in the region, up to six (6) miles upwind and downwind from the TIP site, show high concentration of asbestos fibers.

In July 2015, Respondent, TIP and DOJ/EPA reached an agreement as part of the CAMP whereby Respondent would finish the removal of the scrap metal in the Work Area of the TIP property. See copy of letter from the DOJ-ENDR to Honorable Judge Charles A. Cordero, US Court of Appeals, CAMP in RX 12.

In sum, and as a result of this briefly described preamble process, a Work Plan to remove ACM before additional scrap metal removal work by Homeca at the Work Area

inside the TIP Property. See Work Plan in RX 13. This Work Plan was approved by EPA on October 2, 2015. See RX 14.

This Work Plan is the one that the Complainant makes reference to in the subject Compliance Order.

2017 - 2021

Prior to conducting any further work at TIP, Respondent engaged an asbestos consultant and laboratory to conduct sampling in the same locations as had been sampled before in the school and Head Start, where the clean-up work had been conducted, certified-clean and accepted by EPA. The sampling method, wipe samples, was the same as conducted by Weston prior to the execution of the AOC and was used as the basis for the findings included by EPA in the AOC. The samples were analyzed for asbestos concentrations and the results were similar and, in some cases, exceeding the concentrations prior to the execution of the AOC and the clean-up of the school and Head Start. See RX 15. Thus, all the clean-up work was not necessary and as of today, the school and Head Start remain with these concentrations.

From 2017 until 2021, Respondent removed the ACM and the scrap metal from the Work Area. In September 2017 hurricanes Irma and María devastated Puerto Rico, causing delays on the execution of the work. The work included removal of ACM and scrap metal from several distillation columns and associated pipes and tanks. Scaffolding structures were erected around those columns, enclosures installed and exhaust ventilation with asbestos particle filtration installed. Stripping and removal of the insulation of the columns and related equipment was conducted while wetting and under controlled conditions. Air monitoring was conducted as part of these activities.

It is pertinent to note that these columns were approximately 200 feet high, structures were weak from years of abandonment, corrosion and general effects of the passing of time. The working conditions inside the enclosures at those heights were extremely hot, and dangerous as the columns experienced significant movement caused by the wind. It is also pertinent to note that the temperatures inside the containers were also extremely hot, as is commonly known for metal-closed containers. Also, the ACM insulation material is impermeable to water, therefore does not absorb water, but rather, when water is applied it flows on its surface.

The inspector's observations during the July 31, 2019 inspection, which are the basis for the findings in the Amended Complaint, failed to recognize these facts and effects of these conditions. The observations presented by Complainant as evidence to demonstrate the allegation that Respondent did not wet the ACM while stripping, are insufficient circumstantial evidence. This observation does not meet the quantum of evidence needed to prove the alleged fact as opposed to the direct evidence presented by Respondent. The conclusion drawn by Complainant thereof does not take into consideration intervening facts. Thus, there is no substantial evidence, as this term is defined under applicable case law and judicial norm, which supports the conclusions and proposed penalties in this case.

The ACM was wetted while stripping and preliminarily bagged at those heights. The bags were placed in containers at the ground level for re-bagging operation prior to transportation off-site. It is pertinent to note that Respondent enclosed all the equipment where stripping was conducted, installed ventilation and collection system to capture asbestos material that could be produced from the stripping and removal of the ACM, and that no visible emissions to the outside air were observed and/or in any way evidenced.

On July 31, 2019, EPA conducted an inspection and found the work-in-progress, prior to transportation for off-site disposal of the ACM removed. This inspection is part of the basis for the subject Complaint. During the inspection, Respondent was directed to hose the inside of the bags with water. Respondent reluctantly received this direction as this conflicted with the provisions in 40 CFR 258.28 which restrict the disposal of liquid waste in solid waste landfills. In addition, hosing ACM with water generates runoffs with asbestos fibers, that when dried, become prone to becoming airborne. This is not a desirable environmental condition nor adequate practice given the particular circumstances in this project.

Respondent completed the removal of ACM and scrap metals by February 5, 2021. See RX 24.

On June 30, 2021 the EPA conducted an inspection. The findings of the inspection are also part of the basis for the subject Complaint. As a result of this inspection, Respondent removed close to **one cubic foot (1 c.f.)** of ACM, obtained a permit and disposed of it in a landfill.

In all, Respondent had removed over eleven thousand cubic yards (11,000 c.y.), that is, **two hundred ninety seven thousand cubic feet (297,000 c.f.)** of ACM from the Work Area and all the scrap metal inside the PR Olefin (TIP) in a period of 10 years and returned the property to usable conditions where it can be part of the economic revitalization needed for the region and that is the government's public policy. See video RX 5.

The evidence in this case demonstrates that there are conditions related to the presence of asbestos in the region, including the TIP site, that has been overlooked by the Complainant. Also, that conclusions do not consider the overall achievements of the Project for the benefit of the environment and the local economy, and that findings were premature and based on circumstantial evidence without taking into consideration direct evidence. Therefore, based on the evidence in this case, Complainant's action against Respondent is not reasonable, is unjust, contradicts public policy, ignores other sources of asbestos, does not meet the applicable substantial evidence judicial norm and principles of applicable Administrative Law, and constitutes selective enforcement and an abuse of discretion, as this term is legally defined.

3(A) Copy of documents in support of the denials made in the Answer to Amended Complaint.

Respondent respectfully understands that the preamble is to be considered for all of its denials, defenses and averments in this case, and this preamble is incorporated herein by reference and made a part hereof for all legal purposes.

Respondent's factual and legal allegations denied in its Answer to Amended Complaint will be supported by both the testimony of the witnesses identified in Section I(A) as well as the documents listed in Section I (B) of the instant Prehearing Exchange, under the circumstances in which they are made.

The documents in support of Respondent denials in its Answer to Amended Complaint, include the following:

- 1) Photos included in RX 4,
- 2) Daily Logs in RX 17,
- 3) Air Monitoring Results in RX 18,
- 4) September 18, 2015 Work Plan in RX 13,
- 5) Photos in RX 20,
- 6) Transportation and Disposal Manifests in RX 16,
- 7) Tallaboa, Peñuelas Climate Temperature Data for July 2019 in RX 25,
- 8) Photos in RX 1, RX 2 and RX 3
- 9) February 5, 2021 Notification to EPA on Completion of the Work Plan in RX 24.
- 10) Aerial video of Work Area taken in 2021, after Respondent's work completed in RX 5
- 11) Notification for Disposal of ACM after June 30,2021 inspection in RX 21
- 12) Draft AOC for the Rest of TIP site in RX 22
- 13) Removal Action Work Plan for Rest of TIP Site in RX 23
- 14) EPA-Weston Report on background asbestos in RX 7
- 15) Report on Other Sources of Asbestos July 2014 RX 8
- 16) AESI Report of initial Fingerprinting Related to Puerto Rico Olefin February 2015 in RX 9
- 17) Presentation of Fingerprinting Report to EPA in RX 10
- 18) May 29, 2015 EPA letter on Fingerprinting Report and Other Sources of Asbestos Report in RX 11
- 19) June 4, 2017 Environmental Wipe Sampling Assessment in RX 15

3(B) Copy of documents in support of asserted affirmative defenses and explanation of the arguments in support of such 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. Respondent respectfully incorporates the preamble by reference and made a part hereof for all legal purposes for its affirmative defenses.

Respondent has complied with all applicable laws and regulations. See documents in:

- 1) Daily Logs in RX 17
- 2) Air Monitoring Results in RX 18
- 3) Photos in RX 20
- 4) Transportation and Disposal Manifests in RX 16
- 5) Tallaboa, Peñuelas Climate Temperature Data for July 2019 in RX 25
- 6) Aerial video of Work Area taken in 2021, after Respondent's work completed in RX 5
- 7) Notification for Disposal of ACM after June 30,2021 inspection in RX 21.

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. See:

- 1) Photos included in RX 4
- 2) Daily Logs in RX 17
- 3) Air Monitoring Results in RX 18
- 4) September 18, 2015 Work Plan in RX 13
- 5) Photos in RX 20
- 6) Tallaboa, Peñuelas Climate Temperature Data for July 2019 in RX 25
- 7) Photos in RX 1

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. See:

1) Air Monitoring Results in RX 18

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. See Complainant's Initial Prehearing Exchange documents identified as CX 7.

EPA lacks jurisdiction over a program already delegated to the Department of Natural and Environmental Resources of the Government of Puerto Rico. See Complainant's Initial Prehearing Exchange documents identified as CX 5 and 6.

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

- 1) Photos in RX 1, RX 2 and RX 3
- 2) Aerial video of Work Area taken in 2021, after Respondent's work completed in RX 5
- 3) Notification for Disposal of ACM after June 30, 2021 inspection in RX 21
- 4) EPA-Weston Report on background asbestos in RX 7
- 5) Report on Other Sources of Asbestos July 2014 RX 8
- 6) AESI Report of initial Fingerprinting Related to Puerto Rico Olefin February 2015 in RX 9
- 7) Presentation of Fingerprinting Report to EPA in RX 10
- 8) May 29, 2015 EPA letter on Fingerprinting Report and Other Sources of Asbestos Report in RX 11
- 9) June 4, 2017 Environmental Wipe Sampling Assessment in RX 15

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, 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. See:

- 1) Examples of ACM Abatement Permits issued by the state agency in RX 6.
- 2) Transportation and Disposal Manifests for ACM from the TIP Project in RX 16

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. See:

- 1) Notification for disposal of ACM after June 30, 2021 inspection in RX 21.

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. See:

- 1) Notification for disposal of ACM after June 30, 2021 inspection in RX 21.
- 2) Transportation and Disposal Manifests for ACM from the TIP Project in RX 16

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

- 1) Complainant's Initial Prehearing Exchange documents identified as CX 26, 27, 28-63, 65-67.
- 2) Daily Logs in RX 17
- 3) Air Monitoring Results in RX 18
- 4) Photos in RX 20
- 5) Transportation and Disposal Manifests in RX 16
- 6) Tallaboa, Peñuelas Climate Temperature Data for July 2019 in RX 25
- 7) Aerial video of Work Area taken in 2021, after Respondent's work completed in RX 5
- 8) Notification for Disposal of ACM after June 30,2021 inspection in RX 21.

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. 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.

- 1) September 18, 2015 Work Plan (same as CX#13)

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.

- 1) Photos in RX 1, RX 2 and RX 3
- 2) Aerial video of Work Area taken in 2021, after Respondent's work completed in RX 5
- 3) Notification for Disposal of ACM after June 30,2021 inspection in RX 21
- 4) EPA-Weston Report on background asbestos in RX 7
- 5) Report on Other Sources of Asbestos July 2014 RX 8

- 6) AESI Report of initial Fingerprinting Related to Puerto Rico Olefin February 2015 in RX 9
- 7) Presentation of Fingerprinting Report to EPA in RX 10
- 8) May 29, 2015 EPA letter on Fingerprinting Report and Other Sources of Asbestos Report in RX 11
- 9) June 4, 2017 Environmental Wipe Sampling Assessment in RX 15

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.

3(C) Factual information Respondent considers relevant to the assessment of a penalty and supporting documentation.

Respondent spent over \$3 million addressing the asbestos contamination in a property that had been abandoned for decades, in complete disarray and without any controls on the asbestos containing material (ACM) in the petrochemical complex. Respondent's action had a direct environmental benefit to the conditions existing in the area and advanced the economic revitalization of an otherwise economically depressed region and communities in the Island. See summary of expenditures by Respondent in RX 27.

The money and work executed by 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 such projects in the larger petrochemical complex, which are so badly needed.

In its assessment calculations Complainant fails to recognize that the expressed main purpose of 40 CFR §61.145(c)(3)(i)(B)(1) is to prevent visible emissions to the outside air. Therefore, it is reasonable to conclude that there is no gravity to the alleged work performed. In addition, the air monitoring data shows that there is no gravity associated with this main purpose of the regulation. It is pertinent to note that this specific provision exempts the wetting requirement, as long as this main purpose is not violated.

The environmental benefits surpass the environmental condition of the region, as evidenced by the following documents:

- 1) Photos in RX 1, RX 2 and RX 3
- 2) Aerial video of Work Area taken in 2021, after Respondent's work completed in RX 5
- 3) Notification for Disposal of ACM after June 30,2021 inspection in RX 21
- 4) EPA-Weston Report on background asbestos in RX 7
- 5) Report on Other Sources of Asbestos July 2014 RX 8

- 6) AESI Report of initial Fingerprinting Related to Puerto Rico Olefin February 2015 in RX 9
- 7) Presentation of Fingerprinting Report to EPA in RX 10
- 8) May 29, 2015 EPA letter on Fingerprinting Report and Other Sources of Asbestos Report in RX 11
- 9) June 4, 2017 Environmental Wipe Sampling Assessment in RX 15

3(D) Respondent inability to pay narrative statement, factual and legal bases and documents to rely on.

For the past year Respondent's net income has been \$206,363. See RX 19.

During the past years, there are a lot of illegal and informal recycling centers in operation in Puerto Rico that did not comply with the environmental laws and regulations. This is an illegal competition for Respondent and other legal scrap metals recycling centers in Puerto Rico.

Respondent's operations are directly affected by external influence. Since 2008, when the prices of tons of ferrous metals increase to a top of \$650, the market prices for the metals have suffered dramatic changes from year to year. Actual market prices for the same metals have dropped to a range from \$300 to \$400 per ton. Recycling companies, such as Respondent, are directly affected by the fluctuation in prices in the secondary market for recycled materials.

Under Puerto Rico Law No. 411 approved in October 2000, which amended Law No. 70 of September 1992, known as the Reduction and Recycling Law for Puerto Rico, the public policy was established to promote recycling and achieve a recycling rate of 35% by the year 2006. One of the driving forces for this public policy is the reduced space for landfill disposal in an Island with limited space and locations for landfill disposal. Puerto Rico measures 35 x 100 miles, with natural resources that need to be protected in most of the Island. New landfill disposal sites are almost an impossible undertaking. There are 29 existing landfills in the Island of which only 7 comply with the federal law, Subtitle D of the Resource Conservation and Recovery Act, as amended ("RCRA"). Of the landfills that have been closed, three (3) are already Superfund Sites, designated under the federal law, Comprehensive Environmental Response Compensation and Liability Act, as amended ("CERCLA"). As a result of this reality, it is a pressing need to deviate wastes from the already reduced landfill space and increase recycling rates pursuant to the public policy.

In this scenario, Respondent operates and dedicates all of its business to recycling. Its business is directly affected by Worldwide events that directly affect market conditions and prices for the recycled material. In this uncertain scenario, Respondent's ability to pay is fragile and can deteriorate more so at any moment. Resulting thereof in an impact on the Puerto Rico recycling needs and the protection of its natural resources.

In U.S. v. Midwest Suspension and Brake, 49 F.3d 1197, 1205 (6th Cir. 1995) 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. Defendant respectfully understands that this Circuit Court decision is persuasive in the instance case.

Respondent reserves the right to submit the names of additional witnesses and to submit additional documents and information prior to the hearing of this matter, upon timely notice.

RESPECTFULLY SUBMITTED.

April 26, 2024

**Rafael
A. Toro
Ramirez**

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

IN THE MATTER OF:

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 RESPONDENT'S REDACTED INITIAL PREHEARING EXCHANGE 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 26, 2024

**Rafael
A. Toro
Ramirez**

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