

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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|--|---|--------------------------------------|
| In the Matter of: |) | |
| |) | Docket No. TSCA-10-2021-0006 |
| GREENBUILD DESIGN & CONSTRUCTION, LLC |) | |
| |) | AFFIDAVIT OF MR. SCOTT WILDER |
| Anchorage, Alaska |) | IN SUPPORT OF COMPLAINANT’S |
| |) | SUPPLEMENTAL PREHEARING |
| Respondent. |) | EXCHANGE |
| _____ |) | |

1 COMES NOW, Mr. Scott Wilder, to declare under penalty of perjury, the following:

2 BACKGROUND AND JOB DUTIES

- 3 1. I am a compliance officer for the United States Environmental Protection Agency (EPA),
4 Region 10, based in Seattle, Washington.
- 5 2. I am currently employed in the Air and Toxics Enforcement Section of the Region’s
6 Enforcement and Compliance Assurance Division.
- 7 3. My official job title is “Environmental Protection Specialist” and part of my job duties
8 include work as a “Financial Analyst.”
- 9 4. I earned my master’s degree in Business Administration in June of 2011, from the
10 Bainbridge Graduate Institute, which is now known as the Presidio Graduate School.
11 During my master’s studies, I took courses in, among other things, finance, accounting,
12 and economics. Prior to obtaining my master’s degree, I spent 10 years working for Bank
13 of America Home Loans, where I, among other things, worked as a branch manager
14 overseeing annual budgeting operations, responding to financial and operational audits,
15 and ensuring compliance with various financial laws and regulations.
- 16 5. I have worked at the EPA since 2010 and at EPA Region 10 since 2016.

- 1 6. Throughout my career at EPA, one of the regular job duties in my position description
2 has always been work as a financial analyst.
- 3 7. As a financial analyst, my job duties include analyzing financial records of respondents
4 who make claims that paying a proposed penalty would create an undue financial burden
5 upon them. This process is commonly referred to as conducting an Ability to Pay (ATP)
6 analysis.
- 7 8. As part of my regular job duties, I have completed multiple trainings relevant to my
8 duties as a financial analyst, including both online and in-person trainings on EPA's ATP
9 analysis process.
- 10 9. As part of my regular job duties, I have attended and presented training modules at
11 national EPA-sponsored ATP conferences.
- 12 10. As part of my regular job duties, I was a member on the National ATP Workgroup that
13 developed EPA's current ATP guidance: [Guidance on Evaluating a Violator's Ability to](#)
14 [Pay a Civil Penalty in an Administrative Enforcement Action](#) (June 29, 2015).
- 15 11. I was awarded Bronze Medals in 2012 and 2015 from EPA's Office of Enforcement and
16 Compliance Assurance (OECA) for my work as part of the Financial Assurance Case
17 Initiative Team.
- 18 12. Since 2010, I estimate that I have completed over 100 analyses of ATP claims made in
19 EPA administrative enforcement cases.

20 CONDUCTING AN ABILITY TO PAY ANALYSIS

- 21 13. Both EPA and EPA Region 10 have developed various procedures and protocols that
22 case teams and financial analysts follow when a respondent raises an ATP claim. Because
23 I understand that the Respondent in the underlying matter is a Limited Liability

1 Corporation (LLC), I will focus on the procedures that EPA uses to analyze an LLC's
2 ATP claim. This process is similar but slightly different than if the respondent were, for
3 example, a municipality or an individual.

4 14. The purpose of conducting an ATP analysis is to determine what financial impact the
5 proposed penalty will have on the respondent's ability to stay in business. Generally,
6 EPA will not pursue a penalty that it knows would put a respondent into a dire financial
7 situation or would cause the respondent to go out of business.

8 15. Financial analysts typically only get involved in an enforcement action after a respondent
9 raises an ATP claim. The initial review of publicly available financial data and the initial
10 determination of whether a given respondent can pay a proposed penalty is typically left
11 up to the enforcement case team.

12 16. When a respondent asserts that it cannot pay a proposed penalty—i.e., when it raises an
13 ATP claim—then case teams will often request assistance from a financial analyst, such
14 as myself.

15 17. The first step in conducting an ATP analysis is gathering the necessary information from
16 the respondent. Without a certain level of financial data and other information from the
17 respondent, I would be unable to determine if the respondent is correct paying a proposed
18 penalty would cause it to go out of business or otherwise suffer an undue financial
19 hardship.

20 18. One of the first things that I do when a case team approaches me about an ATP claim is
21 provide them with the relevant ATP initial data request, so that they can get the necessary
22 information from the respondent. The initial data request varies based on the entity type

1 of the respondent—different information is required if the respondent is an individual
2 versus a municipality versus a corporation.

3 19. When the Respondent is an LLC, I provide case teams with the Limited Liability
4 Company (LLC) Ability to Pay Claim Initial Data Request (attached here as Attachment
5 A).

6 20. The ATP initial data request that I referred to in Paragraph 19, above, requests 14
7 different things from respondents. This includes:

- 8 a. A statement explaining the specific reasons the LLC is claiming an inability to
9 pay the proposed penalty;
- 10 b. Federal tax returns for the most recent 3 years;
- 11 c. Annual financial statements for the most recent 3 years;
- 12 d. Year-to-date financial statements;
- 13 e. LLC Management information;
- 14 f. LLC members information;
- 15 g. Litigation information;
- 16 h. Financial settlements;
- 17 i. LLC control and affiliations;
- 18 j. Credit information;
- 19 k. Insurance information;
- 20 l. Market conditions;
- 21 m. Information about other assets;
- 22 n. Information about investigations;
- 23 o. Forward looking statements; and

1 p. Any additional information that a respondent wishes to provide.

2 21. Though I may not require each piece of information requested in every case, reviewing
3 this depth of information allows me to generate a fairly comprehensive financial profile
4 of the respondent. This, in turn, allows me to determine what financial impact the
5 proposed penalty will have on the respondent's ability to stay in business.

6 22. Once I receive copies of the requested information, I begin my process by looking over
7 all of the information to determine if it is complete and/or if I have questions of the
8 Respondent. Businesses can be set up and run in many different ways and I often need to
9 ask clarifying questions of the respondent or ask for additional documentation. This can
10 be an iterative process where answers to questions result in requests for additional
11 documentation.

12 23. Once I understand how the company operates, I can use the financial data and my
13 professional training and years of experience to start to develop an understanding of how
14 financially solvent the respondent is.

15 24. To assist financial analysts with this process, EPA has developed various financial
16 models known as ABEL, INDIPAY, and MUNIPAY. The appropriate model for each
17 case depends on the respondent's entity type. Those models are publicly available at the
18 following website: <https://www.epa.gov/enforcement/penalty-and-financial-models>.

19 25. For LLCs, the appropriate model to work from is ABEL. Using the documentation that a
20 respondent has submitted in response to the ATP Initial Data Request, I enter relevant
21 information into the ABEL model.

22 26. The ABEL model is a screening tool designed to use past financial information from a
23 respondent to predict the probability that the respondent can afford to pay the proposed

1 penalty. ABEL uses existing information to project current and future available cash
2 flows—for example, the model might determine that there is a 90% probability that the
3 respondent will have sufficient funds to pay the proposed penalty and still have enough
4 capital remaining to stay in business.

5 27. Though the ABEL model is a helpful tool to determine the respondent's financial health,
6 I do not rely on it exclusively. Instead, I use my experience, in conjunction with the
7 financial data available to me and the detailed narrative and forward looking statements
8 that respondents provide to fully consider a respondent's ATP claim.

9 28. It is important to note that my role is not to determine conclusively that the respondent
10 can afford to pay the penalty. Rather, I am to infer from the documentation provided
11 whether the respondent's ability to pay should affect the penalty amount. That said, after
12 reviewing the information and conducting the ATP analysis, I am usually able to say with
13 a certain level of confidence whether the respondent would be able to pay the proposed
14 penalty without jeopardizing its ability to continue in business.

15 29. Respondents are usually fairly cooperative with providing EPA the sort of financial
16 information I request because this process can only serve to help them. EPA does not
17 increase penalty amounts based on a respondent's submitted financial information; EPA
18 will only lower, or potentially even eliminate, a proposed penalty if it concludes that the
19 respondent has a valid inability to pay claim.

20 30. If, however, a given respondent does not cooperate with an ATP information request,
21 then I am unable to analyze its financial health. In that case, I usually recommend that
22 case teams re-review whatever publicly available information they can find on that
23 respondent. But, without more financial information submitted by the respondent, EPA is

1 unable to conduct the sort of detailed ATP analysis that would be necessary to reduce or
2 eliminate a proposed penalty.

3 GREENBUILD DESIGN & CONSTRUCTION, LLC

4 31. I first became involved in the underlying matter sometime in early 2021, when the case
5 team approached me about testifying at the hearing.

6 32. The case team explained that I was never formally brought in to conduct an ATP analysis
7 on GreenBuild Design & Construction, LLC (“Respondent”) because Respondent did not
8 give EPA the financial information that is necessary to conduct an ATP analysis.

9 33. My understanding is that Respondent did provide the case team with one year of its
10 federal tax returns. One year of federal tax returns is insufficient for me to conduct an
11 ATP analysis because it does not provide enough information to establish the trajectory
12 of the company’s finances. The results from one year could be an anomaly and we need
13 data from additional years to assess a company’s stability. We typically ask for a
14 minimum of three years of federal tax returns and other financial documentation.

15 34. As Respondent failed to provide EPA with enough financial information to support its
16 ATP claim, I was unable to complete an analysis of the Respondent. Without more
17 information, it is impossible for me to conclude that Respondent cannot pay the proposed
18 penalty without jeopardizing its ability to continue in business.

19 35. As such, I advised the case team to evaluate whatever publicly available financial
20 information it had on Respondent and to continue asking for the detailed financial
21 information that I would require to conduct an ATP analysis on Respondent.

22 36. My understanding is that as of the date of this affidavit, Respondent has yet to provide
23 EPA with any additional financial information. If Respondent were to provide the

1 information I detailed in Paragraph 20, above, within approximately two weeks of the
2 scheduled hearing, I would likely have sufficient time to analyze its financial stability and
3 evaluate its ATP claim.

4

5 Respectfully submitted,

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9 _____
(Signature and Date)

10 Mr. Scott Wilder,

11 Environmental Protection Specialist

12 EPA Region 10, Enforcement and Compliance Assurance Division

**Limited Liability Company (LLC)
Ability to Pay Claim
Initial Data Request**

* * * * *

- Note: (1) *To avoid duplication, if a response has already been provided, please indicate.*
- (2) *Unless otherwise mentioned, for purposes of this request the Review Period for this request is from fiscal year 2016 to present.*
- (3) *You may assert a confidentiality claim covering part or all of the information submitted to EPA in response to this questionnaire by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” “company confidential.” Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by you, and may be submitted separately to facilitate identification and handling by EPA. Information covered by such a claim will be disclosed by EPA only to the extent and by the procedures set forth in statutes and 40 C.F.R. Part 2, Subpart B. Unless you make a claim at the time you submit the information in the manner described in 40 C.F.R. § 2.203(b), it may be made available to the public by EPA without further notice to you. 40 CFR 2.203; see also 41 Fed. Reg. 36902 (Sept. 1, 1976).*
- (4) *Submit all financial information under an authorized signature with the certification language at the end of this document.*

Please provide the following:

1. **Explanatory Statement**

Provide a substantive statement with supporting information which explains the specific reason(s) why the LLC is claiming an inability to pay the proposed penalty.

2. **Federal Tax Returns**

True and complete copies of signed federal tax returns for the years 2017, 2018, 2019 (and 2020 if completed) that relate to filings for the LLC. If the detailed tax information is reported on a taxpayer’s form 1040, furnish the entire 1040 with all schedules and statements.

3. **Annual Financial Statements**

ATTACHMENT A

If 2020 tax returns are not available, furnish true and complete copies of 2020 financial statements to include but not limited to Income Statement, Balance Sheet, and Cash Flow Statement.

2. **Year To Date Financial Statement**

- (a) If more than three months have elapsed from the end of the LLC's most recently completed fiscal year, provide the most current Year-To-Date financial statements.
- (b) Indicate if there have been any substantive changes with respect to any notes contained in the most recent annual financial statement.

3. **LLC Management**

- (a) The names of senior LLC officers and each officer's total annual remuneration (i.e., salary, bonus, options, perquisites) for each of the years requested for the financial statements.
- (b) For the Review Period indicate if any loans have been made between the LLC and an officer or Member. Also, disclose if any loan(s) have been made between the LLC and a relative or personal acquaintance of any LLC officer, Member or employee, and if so, the terms, conditions and current status of each loan.
- (c) For the Review Period indicate if any other non-operating disbursements (e.g., grants, gifts, transfers, etc.) of assets have been made between the LLC and any of its officers, Members, employees or any relative or personal acquaintance of any LLC officer, Member or employee, and if so, the date and description of and the underlying reason for each disbursement.

4. **Members**

Provide the names of Stockholders/Partners/Members (hereinafter called Members) who hold the first eighty percent (80%) of the LLC's voting shares. For each Member named, indicate the type and percentage of shares held and the respective dollar value.

5. **Litigation**

A statement with relevant details if the LLC currently is, or anticipates being a party to, any litigation which has not been noted in the most recent financial statement and which could impact the LLC's financial situation.

6. **Financial Settlements**

A statement with relevant details if the LLC currently is, or anticipates receiving or paying, a financial settlement which has not been noted in the most recent financial statements.

7. **LLC Control and Affiliations**

ATTACHMENT A

(a) For the period under review indicate if the LLC controlled or controls, or was or is controlled by or affiliated with any other company or entity, domestic or foreign.

For each company or entity, provide:

S name, address and phone number

S type of affiliation (e.g., subsidiary, parent, etc.)

S names of senior officers and board of directors

S description of any operational ties (e.g., provides administrative services, provides marketing services, etc.), and percentage of ownership and means of control.

(b) For the Review Period indicate whether the LLC had or currently has any business with any other entity where a LLC officer, director or principal had or currently has a financial interest in or control of that other entity.

8. **Credit**

(a) If the LLC has any lines of credit or other loans which have not been mentioned in the most recent financial statement, indicate the financial institution(s) or lender(s), the specific terms and conditions, and the current financial status of that line of credit or loan.

(b) If the LLC applied for and was denied credit (including a loan) during the Review Period, provide a statement containing details of that credit request and denial (i.e., date applied for, amount, name of financial institution/lender, date denied, etc.).

Include a copy of the letter of denial from that financial institution/lender.

9. **Insurance**

Provide true and complete copies of each policy that provides any insurance coverage for the LLC regarding this specific environmental issue.

10. **Market Conditions**

If market conditions are a negative factor affecting the LLC's current financial health, provide a substantive statement with supporting information.

11. **Other Assets**

If the LLC has a financial interest in, control of, or is the beneficiary of any asset (real estate, major equipment, aircraft, watercraft, etc.) in the U.S. or in another country that has not been identified in the LLC's federal tax returns or in other financial information provided to EPA, identify each asset by type of asset, estimated value, and specific location (e.g., address, state or country).

12. **Investigations**

Identify and describe any investigations currently underway of the LLC and/or LLC officers and/or Members that may have an impact on the LLC's operations or financial health.

13. **Forward Looking Statements**

Provide “Forward looking statements” made or issued publicly by the LLC or someone acting on behalf of the LLC during the past year.

14. **Additional Information**

The EPA encourages the LLC to provide any additional substantive information which provides insight into its financial condition.

Please note that the EPA may request additional information as part of its review of this case information.

CERTIFICATION

I certify that the attached financial information is true, correct, and complete. I certify that the portions of these documents which I did not personally prepare were prepared by persons acting on behalf of [company name] under my supervision and at my instruction, and that the information provided is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment.

Signature

Date

Print Name

Title