

## **Futerman, Andrew**

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**From:** Futerman, Andrew  
**Sent:** Thursday, May 6, 2021 4:23 PM  
**To:** Rodrigo  
**Cc:** Kari Anne  
**Subject:** Our phone call today regarding GreenBuild Design & Construction, Docket Number TSCA-10-2021-0006  
**Attachments:** EPA eFiling \_ US EPA.pdf; ATP-LLC 01-2021.docx

Mr. von Marees:

Thank you for spending the time to talk with me on the phone today regarding *In the Matter of: GreenBuild Design & Construction*, Docket Number TSCA-10-2021-0006. I understand that you have two requests from EPA. First, you want to ask the Court to delay GreenBuild's May 10, 2021 prehearing exchange deadline and you want to know (A) how to file that motion with the court and (B) whether EPA will agree to that motion. And second, you want to understand what information GreenBuild must submit to EPA in order to support GreenBuild's argument that it cannot afford to pay a civil penalty in this matter.

Regarding your first point, EPA does not agree with that motion. The Court first issued its prehearing order on February 3, 2021. In that order, the Court described exactly what information GreenBuild would need to submit in its prehearing exchange and informed the parties that GreenBuild's prehearing exchange was due on April 9, 2021. Then on March 3, 2021, in response to EPA's motion for an extension to allow GreenBuild and EPA to continue our settlement discussion, the Court extended that deadline to May 10, 2021. So, since April 9, GreenBuild has been on notice as to what information it needed to submit to the Court. And since March 3, GreenBuild has been on notice that it would have to file its prehearing exchange on May 10, 2021.

Further, EPA had an email conversation with Mrs. von Marees on April 15, 2021 about EPA's prehearing exchange, then filed that exchange on April 19, 2021. Therefore, GreenBuild has had the ability to discuss with EPA the information contained in EPA's prehearing exchange since mid-April and has had plenty of time to request an extension on its May 10 deadline. GreenBuild did not choose to do so until today, Thursday, May 6, 2021, just four days before the deadline. As such, EPA believes that this motion is untimely and will not consent to it.

In order to ask the Court for an extension, GreenBuild must file a motion with the Office of Administrative Law Judges (OALJ). Their website is located here: <https://www.epa.gov/alj>. The OALJ has also published a few guides that may be helpful to you, such as the ALJ Practice Manual, [https://www.epa.gov/sites/production/files/2013-09/documents/alj-practice-manual\\_0.pdf](https://www.epa.gov/sites/production/files/2013-09/documents/alj-practice-manual_0.pdf), and the Citizen's Guide to the Court, (Spanish version available here: [https://www.epa.gov/sites/production/files/2013-09/documents/citizens-guide-espanol\\_0.pdf](https://www.epa.gov/sites/production/files/2013-09/documents/citizens-guide-espanol_0.pdf)). I have also attached a document to this email entitled "OALJ E-Filing Instructions" that you may find helpful. Additionally, as I explained on the phone, Ms. Mary Angeles – [Angeles.Mary@epa.gov](mailto:Angeles.Mary@epa.gov) – is the OALJ Hearing Clerk, who may be able to provide you additional assistance.

As to your second point, please see the attached "Limited Liability Company (LLC) Ability to Pay Claim Initial Data Request) document. In order to support an inability to pay claim, GreenBuild will have to submit all of the information requested in that document. If it does, then EPA's financial analysts will review GreenBuild's submission and determine what, if any, penalty GreenBuild can afford to pay. If you have any additional questions about what information EPA would need to see in order to analyze GreenBuild's ability to pay a civil penalty, please let me know.

Thank you,

**Andrew Futerman,**

Attorney Advisor

U.S. Environmental Protection Agency - Region 5

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(he/him)

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

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- 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**

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**

(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