

Futerman, Andrew

From: Futerman, Andrew
Sent: Monday, March 29, 2021 3:34 PM
To: Kari Anne
Cc: Rodrigo
Subject: RE: PLEASE REVIEW: Revised Settlement Offer for GreenBuild Design & Construction

Mr. and Mrs. von Marees:

Thank you for getting back to me. I understand that this has been a very hard year on everyone and I appreciate you raising these concerns.

In your March 24th email, you stated that Greenbuild Design & Construction is unable to pay the reduced penalty of [REDACTED] within 30 days of a consent settlement agreement being filed. You raised the concern that the firm would not be able to make payroll if it paid the proposed penalty in that time frame. If Greenbuild is facing financial hardship that makes it unable to pay the reduced penalty within 30 days, there are a few other options for addressing that and still reaching a settlement with EPA. You mentioned that Greenbuild's goal is to settle this case in an amicable manner; well I agree entirely. Here are some options that we could explore to do so.

Normally, penalties are due within 30 days of the effective date of the consent agreement. But, if Greenbuild will submit a statement explaining how COVID-19 has had a negative financial impact on it, we can delay payment of the [REDACTED] for up to 90 days from the effective date. (See the end of this email for an example of such a statement.)

If Greenbuild further certifies that it has lost 25% of its revenue since March of 2020, then EPA can establish a payment plan where Greenbuild will be able to pay the [REDACTED] penalty in installments. EPA is legally required to collect interest on any part of the penalty not paid within 30 days, but given the reduced penalty of [REDACTED], the total interest collected would be rather minimal. Here is an example of a potential payment plan:

- Payment 1: within 30 days of effective date of agreement -- \$ [REDACTED]
- Payment 2: Within 3 months of effective date of agreement -- \$ [REDACTED]
- Payment 3: Within 6 months of effective date of agreement -- \$ [REDACTED]

If neither of those options work, Greenbuild can submit additional financial documentation to support a claim that it is unable to pay the reduced penalty under the two scenarios discussed above. Required documentation includes things like financial statements prepared by an outside accounting firm, balance sheets, budgets and year-to-date results, asset ledgers, loan and mortgage agreements, and 3-5 years of federal tax returns. EPA's financial analyst will review the documentation and assess Greenbuild's ability to pay the proposed penalty.

Please consider the options explained above and let me know if you believe that any of these options would address Greenbuild's current financial situation. As usual, please contact me if you have any questions.

Example of a certified statement describing how COVID-19 has negatively impacted Greenbuild's financial health:

"I certify under penalty of law that COVID-19 negatively impacted the financial health of GreenBuild Design & Construction by [insert basic description of COVID-19's financial impact]. The information contained in this submittal is to the best of my knowledge and belief, true, accurate, and complete. I am authorized and empowered to act on behalf of GreenBuild Design & Construction."

Thank you,

Andrew Futerman

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From: Kari Anne <kad@greenbuild.us.com>
Sent: Wednesday, March 24, 2021 5:48 PM
To: Futerman, Andrew <Futerman.Andrew@epa.gov>
Cc: Rodrigo <rad@greenbuild.us.com>
Subject: Re: PLEASE REVIEW: Revised Settlement Offer for GreenBuild Design & Construction

Good afternoon, Mr. Futerman,

After review of your revised settlement offer of \$ [REDACTED], GreenBuild Design & Construction, Respectfully, Rejects your offer.

Again, GreenBuild Design & Construction unequivocally denies any wrongdoing, and has complied with all Licensing Requirements and Rules and Regulations set forth by the State of Alaska, Municipality of Anchorage, and the Environmental Protection Agency (EPA.)

[REDACTED]

GreenBuild Design & Construction is a small business with less than 5 employees. Unfortunately, in 2020, a pandemic referred to as Covid 19, literally shutdown the entire United States and countries abroad. As a result of said shutdown, GreenBuild Design & Construction suffered a great deal of hardship during this time. The main focus of GreenBuild during the pandemic was to ensure that the few employees employed by GreenBuild Design & Construction had at least an employment lifeline. After such a dramatic year, GreenBuild Design & Construction is in the process of trying to rebuild and strengthen its business once more. The revised penalty you have proposed, and set demand of payment within 30-days of judgment, would once more put a hardship upon GreenBuild Design & Construction and force GreenBuild into a decision of whether to make payroll or pay an unfounded penalty.

It is GreenBuild Design & Construction's desire to settle this case with EPA in an amicable manner. Please let me know if you would like to further discuss and remedy this matter before resorting to unnecessary court proceedings.

Sincerely,

Kari von Marees
Rodrigo von Marees
GreenBuild Design & Construction

On Mar 23, 2021, at 9:11 AM, Futerman, Andrew <Futerman.Andrew@epa.gov> wrote:

Hello Mr. and Mrs. von Marees:

I wanted to check in with you regarding this settlement offer. As I explained last, I am able to offer you the option of settling this matter, without requiring the additional time and expense required of litigation, [REDACTED]. But, as the court's deadlines for preparing for trial are fast approaching, I do need to know whether you will accept this offer or not. Please let me know.

If you have any questions or would prefer to discuss this over the phone, I can certainly arrange that.

Thank you,

Andrew Futerman

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From: Futerman, Andrew
Sent: Thursday, March 18, 2021 11:38 AM
To: Rodrigo <rad@greenbuild.us.com>; Kari Anne <kad@greenbuild.us.com>
Subject: PLEASE REVIEW: Revised Settlement Offer for GreenBuild Design & Construction

Settlement Confidential

Mr. and Mrs. von Marees:

[REDACTED]

As we previously discussed, EPA considers a business' ability to pay a civil penalty when determining appropriate penalties. It is not our intention to force Respondents out of business, but rather to make

sure that violations are rectified with appropriate penalties. [REDACTED]

[REDACTED] As such, EPA is willing to offer GreenBuild a revised penalty of [REDACTED] to resolve the four TSCA violations alleged against it, if GreenBuild is willing to settle this case. [REDACTED]

If this settlement offer is acceptable to you, then I will draft a Consent Agreement and Final Order memorializing this agreement. By signing that agreement, GreenBuild is not admitting liability or that it did anything wrong. Rather, GreenBuild is simply agreeing to pay a civil penalty rather than spending the additional time and money to litigate these issues in Court. The penalty would be due 30 days after the effective date of that Order. The Order becomes effective once it is reviewed and signed by the Judge.

Until the Consent Agreement and Final Order is accepted by the Court, the Court's prehearing order is still in effect. As such, all of the dates and deadlines set out in the Court's revised prehearing order are still applicable. Therefore, I must ask for your decision on this settlement as soon as possible, because if you do not agree then we both have to prepare to go to trial. **Please let me know your answer no later than Monday, March 22, 2021.**

If you have any questions or would like to discuss any of this in more detail, please let me know.

Thank you,

Andrew Futerman

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