

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
)
GREENBUILD DESIGN &) Docket No. TSCA-10-2021-0006
CONSTRUCTION, LLC)
)
Anchorage, Alaska) **COMPLAINANT’S SUPPLEMENTAL**
) **PREHEARING EXCHANGE**
)
Respondent.)
_____)

I. INTRODUCTION

COMES NOW, the U.S. Environmental Protection Agency, Region 10 (“Complainant”), to respectfully request that this Court allow the following supplement to its prehearing exchange. Pursuant to the Consolidated Rule of Practice, 40 C.F.R. Part 22, a party who has made an information exchange under 40 C.F.R. § 22.19(a) shall promptly supplement or correct the exchange when the party learns that the information exchanged or response provided is incomplete, inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party pursuant to this section. 40 C.F.R. § 22.19(f).

Pursuant to this Court’s February 3, 2021 Prehearing Order, any addition of a proposed witness or exhibit to the prehearing exchange, submitted pursuant to Section 22.19(f) of the Rule of Practice, must be filed with an accompanying motion to supplement the prehearing exchange only when supplementation is sought within 60 days of the scheduled hearing. As this supplement is offered more than 60 days before the scheduled hearing—currently scheduled to being on May 2, 2022—Complainant respectfully offers it without an accompanying motion.

II. EXPECTED TESTIMONY OF MR. SCOTT WILDER

In its initial prehearing exchange, Complainant identified Mr. Scott Wilder as a proposed expert witness to be called on rebuttal, if necessary. Complainant now intends to call Mr. Wilder as an expert

witness during its case-in-chief. The substance of Mr. Wilder’s expected testimony has not changed since the initial prehearing exchange.

III. ADDITIONAL DOCUMENTS AND EXHIBITS INTENDED TO BE INTRODUCED

Exhibit Number	Description
CX 106	Redacted e-mail exchange between Complainant’s counsel and Respondent on March 29, 2021
CX 107	Redacted e-mail exchange between Complainant’s counsel and Respondent on May 6, 2021, with attachment
CX 108	Redacted e-mail exchange between Complainant’s counsel and Respondent on December 3, 2021
CX 109	Affidavit of Mr. Scott Wilder

Complainant offers three e-mail exchanges between its counsel and Respondent as evidence in this matter. Complainant has redacted these e-mail exchanges to avoid revealing confidential settlement information. *See* 40 C.F.R. § 22.19(a)(1) (“Parties are not required to exchange information relating to settlement which would be excluded in federal courts under Rule 408 of the Federal Rules of Evidence.”); Federal Rules of Evidence R. 408 (“Evidence of the following is not admissible . . . either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or contradiction: (1) furnishing, promising, or offering—or accepting, promising to accept, or offering to accept—a valuable consideration in compromising or attempting to compromise the claim; and (2) conduct or a statement made during compromise negotiations about the claim . . .”). If this Court wishes to review unredacted versions of these e-mail exchanges, Complainant would be willing to submit those documents for *in camera* review.

Respectfully submitted,

Andrew Futerman
Counsel for Complainant
EPA Region 10

In the Matter of *GreenBuild Design & Construction, LLC*, Respondent.
Docket No. TSCA-10-2021-0006

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Complainant's Supplemental Prehearing Exchange**, along with copies of Complainant's Exhibits 106, 107, 108, and 109, dated February 15, 2021, was served on the following parties in manner indicated below:

Original by OALJ E-Filing System to:
Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1200 Pennsylvania Avenue, NW
Washington DC 20004

Copy by Electronic Mail to:
Mr. and Mrs. Rodrigo and Kari von Marees
GreenBuild Design & Construction, LLC
rad@greenbuild.us.com
kad@greenbuild.us.com
For Respondent

Dated: February 15, 2021
Chicago, Illinois

Respectfully submitted,

Andrew Futerman
Counsel for Complainant
EPA Region 10