

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	Docket No. TSCA-10-2021-0006
GREENBUILD DESIGN & CONSTRUCTION, LLC)	
)	COMPLAINANT’S NOTICE TO THE COURT
Anchorage, Alaska)	
)	
Respondent.)	
_____)	

NOTICE TO THE COURT

COMES NOW, the U.S. Environmental Protection Agency, Region 10 (“Complainant”), by and through its undersigned counsel, to respectfully notify this Court that as a result of GreenBuild Design & Construction, LLC’s (“Respondent”) failure to file its initial post-hearing brief, Complainant will not be filing a reply post-hearing brief.

On May 24, 2022, this Court ordered the parties to “submit post-hearing briefs in sequential order.” Post-Hearing Scheduling Order. Complainant’s initial post-hearing brief was due on July 8, 2022, Respondent’s initial post-hearing brief was due on August 5, 2022, Complainant’s reply brief was due on August 19, 2022, and Respondent’s reply brief was due on September 2, 2022. *Id.* Complainant complied with this Court’s order and filed its initial post-hearing brief on July 8, 2022. Respondent failed to comply with this Court’s order and did not file an initial post-hearing brief.

Respondent was aware of its opportunity to file a post hearing brief. On two separate occasions, this Court put Respondent on notice that it could file a post-hearing brief. At the end of the hearing held in this matter, this Court informed Respondent that it would have the opportunity to file additional arguments after the hearing:

JUDGE BIRO: Once I get a copy of the transcript...I will look at that testimony along with the documents that were admitted into the record, *any arguments that you submit after the hearing*, and I will render my decision.

It’s a very time-consuming process and it is likely to take at least six months.

MR. VON MAREES: (Speaking for himself) Okay.
JUDGE BIRO: That's how things go.
MR. VON MAREES: (Speaking for himself) Okay.
...
JUDGE BIRO: Okay?
MR. VON MAREES: (Speaking for himself) Okay.

Trial Tr. vol 2, 195–96 (emphasis added). *See also* Post-Hearing Scheduling Order (Ordering the parties to submit post hearing briefs according to a specified schedule). Therefore, this Court informed Respondent, both orally and in writing, that it had the opportunity to submit arguments after the hearing.

Complainant also informed Respondent that it had the opportunity to file a post-hearing brief. Attachment A. When counsel for Complainant served Complainant's Initial Post-Hearing Brief on Respondent, Mr. von Marees responded by asking Complainant why it kept filing documents when the Court already has all of this paperwork and had heard both sides. To that, counsel for Complainant responded that after the hearing the parties are given the opportunity to file briefs supporting their arguments or refuting the other side's arguments. *See id.* Therefore, Complainant also put Respondent on notice of its ability to file post-hearing briefs in this matter.

Finally, when the deadline for Respondent's initial post hearing brief passed, the OALJ Hearing Clerk, Ms. Mary Angeles, wrote to Respondent to let it know that its deadline for filing its post-hearing brief had passed and she had not yet received a brief from Respondent. Attachment B. As of the date of this filing, Respondent has not responded to Ms. Angeles' email and has not attempted to file its post-hearing brief out of time.

Complainant also notes that Respondent has shown it has the ability to file briefs using the OALJ e-filing system and to comply with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, and this Court's orders. *See, e.g.,* Respondent's Initial Prehearing Exchange (filed on May 17, 2021 using the OALJ's e-filing system and complying with this Court's February 3 and March 2, 2021 Prehearing Orders); Respondent's April 15, 2022 Response to

Complainant's Motion to Accept an Affidavit in lieu of Testimony (filed using the OALJ's e-filing system and complying with 40 C.F.R. Part 22).

Therefore, Respondent has been made aware of its opportunity to file post-hearing briefs by this Court, by Complainant, and by the OALJ's hearing clerk. As such, Respondent's failure to file its brief with this Court, and Respondent's failure to respond to the OALJ's attempt to locate any such brief, should be seen as intentional. As the EAB has counseled, "a litigant who elects to appear *pro se* takes upon himself or herself the responsibility for complying with the procedural rules and may suffer adverse consequences in the event of noncompliance." *In re Rybond, Inc.*, 6 E.A.D. 614, 627 (EAB 1996). Respondent has no more argument to offer this Court.

As Respondent failed to file an initial post-hearing brief, Complainant cannot file a reply brief. *C.f.* 40 C.F.R. § 22.16(b) ("The movant's reply to any written response must be filed within 10 days after service of such response and shall be limited to issues raised in the response."). Nevertheless, as fully laid out in its initial post-hearing brief, Complainant has met its burden to show that \$25,609 is a reasonable penalty to order Respondent to pay for its four violations of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 to 2697 and the Renovation, Repair, and Painting Rule (RRP Rule), 40 C.F.R. Part 745, subpart E.

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 **Notice to the Court**, dated August 11, 2022 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: August 11, 2022
Chicago, Illinois

Respectfully submitted,

Andrew Futerman
Counsel for Complainant
EPA Region 10

ATTACHMENT A

Futerman, Andrew

From: Futerman, Andrew
Sent: Monday, July 11, 2022 9:51 AM
To: Rodrigo; kad@greenbuild.us.com
Subject: RE: Service of Document filed in: GreenBuild Design & Construction, LLC Docket No. TSCA-10-2021-0006

Mr. and Mrs. von Marees:

This is how the litigation process works. After the hearing, the parties are given the opportunity to file briefs supporting their arguments or refuting the other side's arguments. The schedule for briefing was provided in the Court's May 24, 2022 post-hearing scheduling order that we both received. After that briefing process is complete then Judge Biro will decide the case.

Thank you,

Andrew Futerman,

Pronouns: he/him/his ([Why this is important](#))
Attorney Advisor
U.S. Environmental Protection Agency - Region 5
Office of Regional Counsel; Multi Media Branch I, Section III
77 W. Jackson Blvd., M/S C-14J, Chicago, IL 60604
312.353.2325
Futerman.Andrew@epa.gov

From: Rodrigo <rad@greenbuild.us.com>
Sent: Saturday, July 9, 2022 12:52 PM
To: Futerman, Andrew <Futerman.Andrew@epa.gov>
Subject: Re: Service of Document filed in: GreenBuild Design & Construction, LLC Docket No. TSCA-10-2021-0006

Why you keep filling this of the judge ready has all paperwork and she hear both side ?
Now just waiting in her decision about the penalty if is legit or not.
Remember GreenBuild Design & Construction is not longer operating.

Rodrigo A. von Marées

On Jul 8, 2022, at 12:30 PM, Futerman, Andrew <Futerman.Andrew@epa.gov> wrote:

Mr. and Mrs. von Marees:

Attached please find a copy of Complainant's Initial Post-Hearing Brief that I just filed with the Court in *GreenBuild Design & Construction, LLC*, Docket No. TSCA-10-2021-0006. If you have any questions, please let me know.

ATTACHMENT A

Thank you,

Andrew Futerman,

Pronouns: he/him/his ([Why this is important](#))

Attorney Advisor

U.S. Environmental Protection Agency - Region 5

Office of Regional Counsel; Multi Media Branch I, Section III

77 W. Jackson Blvd., M/S C-14J, Chicago, IL 60604

312.353.2325

Futerman.Andrew@epa.gov

ATTACHMENT B

Futerman, Andrew

From: Angeles, Mary
Sent: Monday, August 8, 2022 7:58 AM
To: rad@greenbuild.us.com; kad@greenbuild.us.com
Cc: Futerman, Andrew; Meinhardt, Danielle; Schwartz, Emilie
Subject: Greenbuild Design & Const., LLC, Docket No. TSCA-10-2021-0006

Good Morning Mr. von Marees. I am reaching out to you to inquire if you sent Respondent's Post-Hearing Brief by USPS mail, or by another mailing service. You can also file it electronically using the OALJ E-Filing system. The response was due Aug. 5, 2022. Let me know if you have any questions. Thank you.

*Best,
Mary Angeles (she/ella)
Office of Administrative Law Judges*



Standard USPS Mail:
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Mail Code 1900R
Washington, DC 20460
Direct: 202.564.6281
Gen: 202.564.6255
Cell: 202-809-6807 (Call/Text)
Email: angeles.mary@epa.gov
Electronic Filing: https://yosemite.epa.gov/oa/eab/eab-alj_upload.nsf

Overnight USPS/FedEx/UPS:
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ronald Reagan Building (MC 1900R)
1300 Pennsylvania Ave., N.W.
Suite M1200
Washington, DC 20004