

BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES

U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

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IN THE MATTER OF:	:
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	:
GREENBUILD DESIGN &	: Docket No.
CONSTRUCTION, LLC	: TSCA-10-2021-0006
	:

Volume II

Tuesday,
May 3, 2022

Videoconference

The above-entitled matter came on for
hearing, pursuant to notice, at 1:00 p.m. EDT

BEFORE:

THE HONORABLE SUSAN BIRO
Chief Administrative Law Judge

APPEARANCES:

On Behalf of GreenBuild Design and
Construction LLC:

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On Behalf of the Environmental
Protection Agency Region 5:

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ALSO PRESENT:

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JENNIFER ALMASE, EPA
MARY ANGELES, EPA
MATT BARNWELL, EPA
ALYSSA KATZENELSON, EPA

EMILIE SCHWARTZ, EPA

C-O-N-T-E-N-T-S

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Maria Tartaglia	6	109	121	121
Rodrigo Von Marees	126	158		
Paul Maple	180	186		

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1 P-R-O-C-E-E-D-I-N-G-S
 2 1:11 p.m.
 3 JUDGE BIRO: Good morning, everyone.
 4 I understand that you had some technical
 5 difficulties. Thank you for working those out.
 6 We're continuing the second day of
 7 hearing in the GreenBuild Design and Construction
 8 LLC matter, TSCA No. 10-2021-006.
 9 I think where we left off, wasn't it
 10 Ms. Tartaglia was in the midst of her testimony,
 11 is that right, Mr. Futerman?
 12 MR. FUTERMAN: Yes, Your Honor.
 13 JUDGE BIRO: Okay, can we proceed?
 14 MR. FUTERMAN: Yes, Your Honor.
 15 Respectfully, are we are on the record yet?
 16 JUDGE BIRO: I think we are. Is the
 17 Court Reporter here?
 18 COURT REPORTER: We were on the record
 19 upon your entering.
 20 JUDGE BIRO: Okay, that's great.
 21 Thank you.
 22 Is there any preliminary matter that

6

1 I thought I lost you. Okay, Mr. Lopez, you're
 2 back again with us today?
 3 INTERPRETER LOPEZ: I am, ma'am, a
 4 pleasure to be here with you.
 5 JUDGE BIRO: And you remain under the
 6 oath that you swore yesterday.
 7 INTERPRETER LOPEZ: Understood, yes.
 8 JUDGE BIRO: Okay, Mr. Futerman, sorry
 9 to have taken a moment of your time. Please
 10 proceed.
 11 MR. FUTERMAN: Thank you, Your Honor,
 12 and not a problem.
 13 Good morning, Ms. Tartaglia, how are
 14 you this morning?
 15 THE WITNESS: Pretty good.
 16 WHEREUPON,
 17 MARIA TARTAGLIA
 18 was called as a witness by Counsel for the
 19 Government and, having been previously sworn, was
 20 examined and testified as follows:
 21 DIRECT EXAMINATION
 22 BY MR. FUTERMAN:

5

1 anybody feels the need to discuss before we
 2 proceed?
 3 MR. FUTERMAN: None from the
 4 Complainant, Your Honor.
 5 JUDGE BIRO: Okay, great.
 6 INTERPRETER LOPEZ: Just one --
 7 JUDGE BIRO: Continue.
 8 INTERPRETER LOPEZ: Just one thing
 9 that the -- that the Respondent just mentioned to
 10 me. The fact that he has to go get his kids
 11 again today like he did yesterday.
 12 JUDGE BIRO: Let me stop you for one
 13 minute. I believe we have a new interpreter
 14 today?
 15 INTERPRETER LOPEZ: We, yeah. You do,
 16 ma'am, yes, we do.
 17 JUDGE BIRO: Mr. Reporter, could you
 18 please swear in the new interpreter.
 19 (Interpreter sworn.)
 20 INTERPRETER AQUINO: Yes. I do. Can
 21 you guys hear me? You're welcome.
 22 JUDGE BIRO: Okay. And we -- Mr. --

7

1 Q Good, and I do just want to remind you
 2 of the same thing, that you are under the same
 3 oath that you took yesterday.
 4 A Yes.
 5 Q Perfect, thank you so much. So Ms.
 6 Tartaglia, yesterday we spent some time
 7 discussing your job duties and how you go about
 8 calculating penalties in just sort of a generic
 9 RRP rule case.
 10 At this point I want to switch and
 11 start talking about your involvement in this
 12 matter, the GreenBuild Design and Construction
 13 matter. And I'll refer to them as Respondent or
 14 GreenBuild, if that's acceptable to you.
 15 A Yes.
 16 Q Thank you so much, Ms. Tartaglia. So
 17 when did you first become involved with
 18 GreenBuild?
 19 A So I first became involved when
 20 Inspector Rob Hamlet approached me in 2018 around
 21 April. He was concerned that the Respondent did
 22 not show up for an inspection that -- that should

8

1 have happened last October 2017. So I took -- I
 2 took it upon myself to give him a call around
 3 April, the first week of April.
 4 Q Give -- give who a call? I'm sorry,
 5 Ms. Tartaglia.
 6 A I'm sorry, give Mr. Rodrigo Von Marees
 7 a phone call.
 8 Q Okay, so if I understand correctly,
 9 Mr. Hamlet, an EPA inspector, had tried to
 10 schedule inspections with the Respondent?
 11 A Yes, that's correct.
 12 Q But for whatever reason was unable to
 13 do so?
 14 A Yes.
 15 Q Okay, so -- so did -- Mr. Hamlet
 16 approached you about contacting the Respondent?
 17 A Yes.
 18 Q And did you in fact reach out to a
 19 representative from the Respondent?
 20 A Yes, I did.
 21 Q Okay, and who did you contact?
 22 A I was able to reach Mr. Rodrigo Von

10

1 (Whereupon, the above-entitled matter
 2 went off the record at 1:17 p.m. and resumed at
 3 1:22 p.m.)
 4 JUDGE BIRO: Okay, we're going back on
 5 the record, having hopefully fixed our technology
 6 problems.
 7 Okay, Mr. Futerman, would you ask your
 8 question again, please.
 9 MR. FUTERMAN: Mr. Lopez, I'm hearing
 10 your Spanish. Okay, thank you. Yes, Your Honor.
 11 Okay, so before that little
 12 interruption, Ms. Tartaglia, we were speaking
 13 about you first became involved in the GreenBuild
 14 matter. So is that a fairly typical practice,
 15 for EPA to contact firms that fail to show up for
 16 in-person TSCA inspections?
 17 THE WITNESS: No.
 18 BY MR. FUTERMAN:
 19 Q So if that's not a typical practice,
 20 why did you do that here?
 21 A It's because Mr. Robert -- Rob Hamlet
 22 expressed concern about Respondent. Numerous

9

1 Marees. I introduced myself, I told him who I --
 2 MR. FUTERMAN: I believe she froze,
 3 Your Honor.
 4 JUDGE BIRO: Okay.
 5 MR. FUTERMAN: My apologies, we could
 6 --
 7 INTERPRETER LOPEZ: Yes, she did. I
 8 don't hear anything, yes.
 9 MR. FUTERMAN: She's just in the next
 10 room, so my co-counsel's going to run over and
 11 see what -- what he can figure out.
 12 INTERPRETER LOPEZ: Got it.
 13 JUDGE BIRO: I think next time we meet
 14 all in Anchorage.
 15 MR. FUTERMAN: I just --
 16 MR. VON MAREES: Mr. Von Marees says
 17 yes, much -- much better, that would be much
 18 better. I would love to go myself.
 19 JUDGE BIRO: It's a long, long trip.
 20 But I think the frustration of getting there and
 21 back might be infinitely less than trying to work
 22 this out by video.

11

1 times we've been trying to contact and schedule
 2 an inspection with him and he failed to show up.
 3 Q Okay, thank you, Ms. Tartaglia. So
 4 did you ultimately reach out to a representative
 5 -- a representative of the Respondent?
 6 A Yes, I did.
 7 Q And who did you contact?
 8 A I spoke with Mr. Rodrigo Von Marees.
 9 Q Okay and via what method? Did you
 10 call him on the telephone, talk to him via email?
 11 A I spoke with him over the phone.
 12 Q Okay, and how do you know that it was
 13 Mr. Von Marees that you spoke to on the phone?
 14 A Because I introduced myself, and I
 15 asked specifically for Mr. Rodrigo Von Marees,
 16 and he answered the phone.
 17 Q Okay and what -- thank you. And did
 18 you identify yourself, who you worked for, and
 19 the purpose of the call?
 20 A Yes, I did.
 21 Q Okay, so what was the purpose of that
 22 call? Why did you call Mr. Von Marees?

1 A The purpose of the call was to remind
 2 him of the RRP rule requirements. I told him we
 3 had information that he pulled a building permit
 4 on a pre-1978 home, and we were concerned that he
 5 missed the inspection meeting that was scheduled
 6 in October of 2017.
 7 I did go into depth about the RRP rule
 8 requirements with him. I told him that he needed
 9 to be firm- and renovator-certified before he
 10 could work on a pre-1978 home.
 11 Q Okay, thank you, Ms. Tartaglia. So I
 12 understand that Mr. Von Marees does not speak --
 13 is not a native English speaker. So I wonder,
 14 are you confident that he understood what you
 15 were talking about?
 16 A Yes.
 17 Q And how are you confident about that?
 18 A Because he spoke to me in English.
 19 Q Did he say anything to you that led
 20 you to believe he understood what the
 21 conversation was about, what kind of the answer
 22 to the conversation was?

1 you would please publish CX 85.
 2 THE WITNESS: I have it open.
 3 MR. FUTERMAN: I'll wait for the --
 4 for Mr. Crawley.
 5 Your Honor, is it acceptable if I lay
 6 the foundation while we're waiting for Mr.
 7 Crawley, or would you prefer me to wait?
 8 JUDGE BIRO: You can lay the
 9 foundation, go ahead.
 10 MR. FUTERMAN: Thank you, Your Honor.
 11 Ms. Tartaglia, do you recognize CX 85?
 12 THE WITNESS: Yes.
 13 BY MR. FUTERMAN:
 14 Q What is CX 85?
 15 A It's the advisory letter I wrote to
 16 Mr. Rodrigo Von Marees.
 17 Q And is CX 85 dated?
 18 A Yes.
 19 Q What is the date on the letter?
 20 A April 25, 2018.
 21 MR. FUTERMAN: And is CX 85 addressed?
 22 INTERPRETER LOPEZ: There is no --

1 A Yes. There was one point during the
 2 conversation I asked him if he understood the RRP
 3 rule requirements and also -- he responded yes.
 4 And then I proceeded to ask him are you going to
 5 continue to work on a pre-1978 home. And he
 6 responded to me by saying no, not until he gets
 7 the certifications.
 8 Q And can you just remind me, when did
 9 this conversation take place?
 10 A This took place around April 12, 2018.
 11 Q Thank you, Ms. Tartaglia. And did you
 12 follow up with Mr. Von Marees after that call
 13 with anything?
 14 A Yes. On April 25 I wrote an advisory
 15 letter stating what we discussed over the phone.
 16 MR. FUTERMAN: Thank you, Ms.
 17 Tartaglia. Would you please turn to the exhibit
 18 that's previously been marked as CX 85?
 19 (Whereupon, the above-referred to
 20 document was marked as Complainant Exhibit No. 85
 21 for identification.)
 22 MR. FUTERMAN: And, Mr. Crawley, if

1 there is no --
 2 THE WITNESS: Yes.
 3 INTERPRETER LOPEZ: No document on the
 4 screen.
 5 MR. FUTERMAN: Yes, I understand that,
 6 I understand that, Mr. Luis. We are just laying
 7 the foundation. We'll talk about the detail when
 8 the document is actually arrives.
 9 I'm sorry, Ms. Tartaglia. So what it
 10 is -- to whom is the letter addressed?
 11 THE WITNESS: It's addressed to Mr.
 12 and Mrs. Rodrigo and Carrie Von Marees.
 13 BY MR. FUTERMAN:
 14 Q And at what address?
 15 A At 11221 Olive Lane, Anchorage, Alaska
 16 99515.
 17 Q Okay, and is CX 85 signed?
 18 A Yes.
 19 Q And by whom is it signed?
 20 A By myself, Maria Tartaglia.
 21 MR. FUTERMAN: Thank you. Your Honor,
 22 at this time Complainant moves to admit CX 85.

16

1 JUDGE BIRO: Mr. Von Marees, other
2 than the fact that this document is in English,
3 do you have any other objections to the admission
4 of CX 85?

5 MR. VON MAREES: Yes. Over here on
6 the -- on the building permit it shows that it's
7 a--

8 JUDGE BIRO: I don't hear anything.

9 INTERPRETER LOPEZ: Can you hear me?
10 Can you hear me now?

11 MR. FUTERMAN: I can hear you, Mr.
12 Luis. I'm not sure if --

13 JUDGE BIRO: I'm sorry, I didn't. If
14 you could repeat it, I'm very sorry.

15 INTERPRETER LOPEZ: No, no, no
16 problem. I just couldn't -- I switched and no
17 one -- no one heard. I'm going to ask him to
18 repeat.

19 MR. VON MAREES: Okay. My objection
20 is that the building permits that are here
21 doesn't show any jobs and that absolutely have
22 nothing to do with lead. That's my objection.

18

1 me -- or excuse me, my apologies. Does this
2 letter list out numerous building permits that
3 Respondent obtained in pre-1978 housing?

4 A Yes, it does.

5 Q And does the letter explain why you
6 included that information?

7 A Yes.

8 Q So what does it say about these --
9 about these building permits?

10 A So based on the information that we
11 gathered, these building permits that he pulled
12 were on pre-1978 homes. And these are considered
13 target housing under the RRP rule.

14 Q Does the letter explain your concerns
15 about Respondent obtaining these building
16 permits?

17 A Yes. When he obtained those permits,
18 he was not firm-certified and he did not have a
19 certified renovator assigned to each project.

20 Q And does the letter explain what the
21 Respondent would have to do to comply with the
22 law?

17

1 JUDGE BIRO: Okay. Respondent
2 objection to CX 85 is overruled. Complainant's
3 Exhibit CX 85 is admitted into the record.
4 (Whereupon, the above-referred to
5 document was received into evidence Complainant
6 Exhibit No. 85.)

7 MR. FUTERMAN: Thank you, Your Honor.

8 So Ms. Tartaglia, turning to the
9 content of this letter, first of all, why did you
10 decide to send this letter to the Respondent?

11 THE WITNESS: I felt the need to
12 because I wanted to make sure he understood the
13 RRP rule requirements, and I wanted to document
14 our conversation that we had on April 12.

15 MR. FUTERMAN: Okay, thank you, Ms.
16 Tartaglia.

17 Mr. Crawley, if you would just scroll
18 down a little bit.

19 BY MR. FUTERMAN:

20 So I notice that the letter lists out
21 numerous building permits that Respondent
22 obtained in pre-1978 housing. Can you explain to

19

1 A Yes.

2 Q Can you --

3 A I provided him information on how to
4 become firm-certified and renovator-certified.

5 Q Okay, and does the letter mention
6 anything about the potential for penalties?

7 A Yes.

8 Q And what does the letter say?

9 A Would you like me to read it?

10 Q If you could just summarize it, I
11 think that would be -- that would be fair.

12 A Okay, so violations of the RRP rule
13 will result into a civil penalties up to \$37,500
14 per violation.

15 Q Thank you, Ms. Tartaglia. One final
16 question about this letter. Is this letter a
17 fair summary about your telephone conversation,
18 or is there anything in this letter that would
19 have been new information to Mr. Von -- Mr. Von
20 Marees?

21 A It's a summary of my phone
22 conversation with Mr. Von Marees.

20

1 Q Thank you, Ms. Tartaglia.
 2 MR. FUTERMAN: Okay, so moving on,
 3 and, Mr. Crawley, if you would please unpublish
 4 CX 85?
 5 After sending this letter, when did
 6 you next encounter the Respondent?
 7 THE WITNESS: I next encountered him
 8 when -- when a scheduled inspection took place.
 9 And that would be around July 25, 2018.
 10 BY MR. FUTERMAN:
 11 Q Okay, so was this the time that Ms.
 12 Farnham and Mr. Hamlet were in Anchorage getting
 13 ready to do their -- their inspections?
 14 A Yes, that's correct.
 15 Q Okay, so why did you encounter the
 16 Respondent during that time period?
 17 A So Mr. Hamlet was concerned that he --
 18 that Mr. Von Marees never replied back to his
 19 email or returned his phone call confirming the
 20 scheduled inspection, which was to take place on
 21 July 26.
 22 So Mr. Hamlet asked me to reach out to

22

1 A Was to confirm if -- confirm the
 2 inspection meeting that was going to take place
 3 the day after, on July 26.
 4 Q Okay, and did that inspection ever
 5 happen, the July 26 inspection?
 6 A No.
 7 Q And do you know why not?
 8 A Because he wanted to reschedule. And
 9 because our inspectors decided to just show up at
 10 his work site on the day that Rob Hamlet called
 11 me, which is July 25.
 12 Q Okay, so rather than reschedule, the
 13 EPA inspectors decided let's drive around and see
 14 if we can kind of get lucky and Respondent will
 15 be there, doing -- doing work at the job site?
 16 A Yes.
 17 Q Okay, and do you now, did -- did EPA
 18 conduct an inspection of Respondent's work site?
 19 A Yes.
 20 MR. FUTERMAN: Thank you, Ms.
 21 Tartaglia.
 22 At this point, would you please turn

21

1 Mr. Von Marees, which I did. I called him again,
 2 I introduced myself to him on the phone, to let
 3 him know that our inspectors, Mr. Rob Hamlet and
 4 Ms. Kim Farnham, was in town to Anchorage,
 5 Alaska, conducting inspections.
 6 I asked him if he -- I asked Mr. Von
 7 Marees if he was available to attend that
 8 meeting. He -- Mr. Von Marees told me that he
 9 was not available and if he could reschedule that
 10 inspection meeting.
 11 Q Okay, so if I understand correctly,
 12 EPA had attempted to schedule an inspection with
 13 Mr. Von Marees on July 26, 2018?
 14 A Yes.
 15 Q So that would have been the day after
 16 the inspection in this case actually took place?
 17 A Yes.
 18 Q Okay, so you reached back out to Mr.
 19 Von Marees. Did you call him on the phone again?
 20 A Yes.
 21 Q Okay, and the purpose of that phone
 22 call was what?

23

1 to what has previously been marked as CX 10?
 2 (Whereupon, the above-referred to
 3 document was marked as Complainant Exhibit No. 10
 4 for identification.)
 5 MR. FUTERMAN: And, Mr. Crawley, if
 6 you would please publish CX 10. Thank you, Mr.
 7 Crawley.
 8 Ms. Tartaglia, do you recognize CX 10?
 9 THE WITNESS: Yes.
 10 BY MR. FUTERMAN:
 11 Q What is CX 10?
 12 A This is the building permit that was
 13 issued by the municipality of Anchorage Building
 14 Department.
 15 Q And what was the subject property of
 16 this building permit?
 17 A It is for the property located at 2208
 18 Turnagain Parkway, Anchorage, Alaska.
 19 Q Ms. Tartaglia, is that the same
 20 address that EPA investigators conducted an
 21 inspection on July 25, 2018?
 22 A Yes.

24

1 Q Thank you, Ms. Tartaglia. And Ms.
2 Tartaglia, when you're investigating companies
3 that you believe may have violated TSCA and the
4 RRP rule, do you regularly obtain copies of the
5 building permits that they hold?

6 A Yes.

7 Q So is CX 10 a record that EPA
8 generates during its regular course of business?

9 A Yes.

10 MR. FUTERMAN: Your Honor, at this
11 time Complainant moves to admit CX 10.

12 JUDGE BIRO: Mr. Von Marees, do you
13 have any objection to CX 10, other than the fact
14 that document is written in English.

15 MR. VON MAREES: No. No.

16 JUDGE BIRO: Okay, Complainant's
17 Exhibit 10 is admitted into the record without
18 objection.

19 (Whereupon, the above-referred to
20 document was received into evidence as
21 Complainant Exhibit No. 10.)

22 MR. FUTERMAN: Thank Your Honor.

25

1 And Ms. Tartaglia, looking at CX 10,
2 do you know who or what entity obtained this
3 building permit?

4 THE WITNESS: Yes.

5 BY MR. FUTERMAN:

6 Q And where is that information located?

7 A It's listed under permit contacts.

8 MR. FUTERMAN: Okay, Mr. Crawley, if
9 you would please scroll down. I think it's just
10 the bottom of that page. Thank you so much.

11 BY MR. FUTERMAN:

12 And Ms. Tartaglia, who -- who obtained
13 this building permit?

14 A GreenBuild Design and Construction,
15 LLC.

16 Q Thank you, Ms. Tartaglia.

17 MR. FUTERMAN: And, Mr. Crawley, if
18 you would please unpublish CX 10.

19 BY MR. FUTERMAN:

20 Okay, so -- so, Ms. Tartaglia, after
21 the inspection that occurred on July 25, 2018,
22 were you then tasked to serve as the case

26

1 developer in this matter?

2 A Yes.

3 Q Okay, so after being tasked to serve
4 as the case developer, what do you do first,
5 what's your process?

6 A So my process is to review what the
7 information that is in the case file. And so
8 this is specifically information that was
9 collected before, during, and after the
10 inspection. And I -- so I read through the
11 inspection report and then start following the
12 steps that are listed in the penalty policy
13 guidance.

14 Q Okay, so in this case, what
15 information kind of generally speaking, we'll go
16 through the details later, but what information
17 did you have in front of you at this point?

18 A So I have in front of me the
19 inspection report, the pictures that the
20 inspectors took during the inspection, and other
21 information that the case file has, which could
22 be the building permit and the business license

27

1 of GreenBuild Design.

2 Q Thank you, Ms. Tartaglia. Would you
3 please turn to an exhibit that was admitted
4 yesterday, CX 7?

5 MR. FUTERMAN: And, Mr. Crawley, if
6 you would publish CX 7. I only have one question
7 about CX 7.

8 BY MR. FUTERMAN:

9 Q So Ms. Tartaglia, what is CX 7?

10 A It's the inspection report for
11 GreenBuild Design and Construction, LLC.

12 Q So is this the report that you were
13 reviewing when -- when developing this matter?

14 A Yes.

15 Q Thank you.

16 MR. FUTERMAN: Mr. Crawley, I assume
17 you don't need to publish CX 7 anymore because
18 I'm finished with it.

19 BY MR. FUTERMAN:

20 Q Ms. Tartaglia, after reviewing CX 7,
21 did you -- what did you conclude about -- about
22 whether any violations occurred?

28

1 A When reviewing the case, I concluded
2 that there were -- RRP violations.

3 Q I'm sorry, you -- did you say a number
4 there?

5 A Four.

6 Q Thank you, you broke up a little bit.
7 So you concluded that there were four RRP rule
8 violations?

9 A Correct.

10 Q Thank you. And what were the four
11 violations that you identified?

12 A Yes, so the first one is GreenBuild
13 was not firm-certified at the time of the
14 inspection. The second violation is the firm
15 failed to assign a certified renovator.

16 The third violation is GreenBuild
17 failed to post warning signs around the work site
18 to warn the general public and occupants to stay
19 away. And the fourth violation is there were no
20 -- because there were paint chips on the ground
21 the Respondent failed to lay plastic sheeting on
22 the ground to collect those paint chips.

29

1 Q And Ms. Tartaglia, those last two
2 violations, violations 3 and 4, are they
3 violations of the work practice standards that
4 you talked about yesterday?

5 A Yes, they are.

6 Q So what does that mean with respect to
7 what type of case this was going to be?

8 A Because work practice standard
9 violations were involved, this was going to be a
10 full penalty action case.

11 Q Okay, what about the possibility of
12 warning? Was there any chance that you would
13 have provided a warning instead of pursuing an
14 enforcement action here?

15 A No, this was a formal inspection. Our
16 EPA inspectors showed up at the work site and
17 witnessed those violations.

18 Q Okay, thank you, Ms. Tartaglia. So
19 once you made the determination that the evidence
20 you reviewed showed that there were these four
21 violations, what did you do next?

22 A What I did next was to determine if

30

1 there was any economic benefit.

2 Q Okay, so does that mean you're -- at
3 this point you're starting to calculate the
4 penalty?

5 A Yes.

6 Q Okay, thank you so much. And did you
7 use the same process that we talked about
8 yesterday using CX 96 to calculate the gravity-
9 based penalty and walking through that guidance
10 document?

11 A Yes, I did.

12 Q Okay, so why don't we walk through
13 that process as it relates to the Respondent. So
14 I guess my question, you sit down and start
15 calculating the penalty. What do you do first?

16 A So what I do first is look for the --
17 no, the first step that I do is consider the
18 economic benefit for these violations, what that
19 means --

20 Q Okay, go ahead.

21 A What that means is I determine how
22 much it costs to come into compliance.

31

1 Q Okay, and did you determine that
2 Respondent derived any economic benefit from its
3 noncompliance?

4 A There were no -- I determined that
5 there was no economic benefit.

6 Q Okay, thank you. So after you
7 determined that there was no economic benefit,
8 what do you do next?

9 A So I proceeded to calculate the
10 gravity-based penalty amount.

11 Q Okay, and was that the same process
12 that we talked about yesterday, you consider the
13 nature, circumstance, and extent of each
14 violation?

15 A Yes.

16 Q Okay, thank you, Ms. Tartaglia. For
17 each of the four violations that you identified
18 here, did they each have the same nature?

19 A Yes, except for one.

20 Q Except for one. Okay, so what was --
21 what was the one violation that was different?

22 A That would be posting of warning

32

1 signs.

2 Q Okay, and what was that violation's
3 nature?

4 A The nature of that violation is
5 denoted by letter B, which is an -- a hazard
6 assessment violation.

7 Q Okay, and the other three, what were
8 their nature?

9 A Their nature was chemical control in
10 nature.

11 Q Okay, thank you so much. After
12 determining each violation's nature, what did you
13 do next?

14 A So after I determine the nature, then
15 I look at the circumstance level and the extent
16 level by going to the appendices of the penalty
17 policy.

18 MR. FUTERMAN: Thank you.

19 Mr. Crawley, if you would please
20 publish CX 96. And I'm looking at Appendix A,
21 which begins on page 30 of 44.

22 And, Ms. Tartaglia, if you would

33

1 please turn to CX 96, Appendix A.

2 THE WITNESS: I have it open.

3 MR. FUTERMAN: Thank you, Ms.

4 Tartaglia. I think we should wait until it's
5 published so the interpreters can interpret it
6 for Mr. Von Marees.

7 CX 96, let me look, CX 96. And I'm
8 going to be on page 32 when we start.

9 And page 32, if you could, Mr.

10 Crawley. Thank you so much.

11 Okay, Ms. Tartaglia, so what was the
12 circumstance level that you determined was
13 appropriate for violation 1, which was the
14 failure to be RRP firm-certified?

15 THE WITNESS: It is level 3a.

16 BY MR. FUTERMAN:

17 Q Okay, and can you tell me where you
18 find that on this chart?

19 A Sure. If you go under Section 7,
20 renovation firm, renovator, and dust sampling
21 technician, it will be under row 1.

22 Q Okay, thank you. And what is the

34

1 circumstance level for violation 2, which was the
2 failure to comply with the renovation
3 certification requirements?

4 A Yes. Again, that's under Section 7.
5 And the circumstance level for that violation is
6 level 3a.

7 Q Okay, and where did you find that
8 information?

9 A Under Section 7, renovation, firm
10 renovator, and dust sampling technician, in row
11 4.

12 Q Thank you, Ms. Tartaglia. And what
13 about -- what's the circumstance level for
14 violation 3, which was the failure to post
15 warning signs?

16 A Yes. So we would have to go back to
17 page 30 of 44.

18 MR. FUTERMAN: Page 30. Okay, Mr.
19 Crawley, would you please scan up to page 30.
20 Thank you so much.

21 THE WITNESS: Under Section 1,
22 information distribution requirements, row 8.

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1 The circumstance level for that violation, which
2 is failure to post warning signs, is level 1b.

3 BY MR. FUTERMAN:

4 Q Okay, and what about for -- what's the
5 circumstance level for violation 4, which was the
6 failure to cover the ground with impermeable
7 materials?

8 A Yes. So if you go to page 34 of 44.

9 MR. FUTERMAN: And, Mr. Crawley, if
10 you would please turn to page 34.

11 BY MR. FUTERMAN:

12 Q Okay, Ms. Tartaglia, so what was the
13 circumstance level for that violation?

14 A It's level 2a, row 8 under Section 9.

15 Q Thank you, Ms. Tartaglia. So once you
16 go through CX 96, Appendix A, as we just did, to
17 determine the circumstance level for each
18 violation, what do you do next?

19 A I next go to Appendix B to look for
20 the extent level.

21 MR. FUTERMAN: Okay, Mr. Crawley, if
22 you would please scroll down to Appendix B. I

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1 don't have the page number in front of me, my
2 apologies.
3 THE WITNESS: That would be page 40 of
4 44.
5 MR. FUTERMAN: Thank you, Ms.
6 Tartaglia.
7 Page 40, actually 41 if you wouldn't
8 mind. Thank you so much.
9 BY MR. FUTERMAN:
10 Q So Ms. Tartaglia, yesterday we
11 discussed the three determinable facts that you
12 consider when determining the extent category.
13 Did you consider those facts with respect to this
14 case?
15 A Yes, I did.
16 Q Okay, so did any children occupy the
17 Turnagain property during Respondent's
18 renovation?
19 A No.
20 Q And did a pregnant woman occupy the
21 Turnagain property during Respondent's
22 renovation?

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1 circumstance level of 3a and a minor extent
2 level, what was the appropriate gravity-based
3 penalty?
4 A It was \$4500.
5 Q Thank you. And for violation 2, which
6 you said had a circumstance level of 3a?
7 A Again, \$4500.
8 Q Okay, we'll put a pin in violation 3
9 for just a moment, but for violation 4, which you
10 said had a circumstance level of 2a?
11 A Six thousand dollars.
12 Q Okay, thank you. So after determining
13 that, those three gravity-based penalties, what
14 do you do next?
15 A So I -- I multiply the gravity-based
16 penalty amount by the inflation multiplier.
17 Q Okay, and is that the memo that we
18 looked at yesterday, CX 98?
19 A Yes, that's correct.
20 Q Okay, and do you know the appropriate
21 inflation multiplier for violations 1, 2, and 4?
22 A Yes.

37

1 A No.
2 Q And did a child or children under six
3 have access to the Turnagain property during
4 Respondent's renovation?
5 A No.
6 Q Thank you, Ms. Tartaglia. So based on
7 your answer to those three questions, were you
8 able to determine the appropriate extent category
9 for all four violations?
10 A Yes I did.
11 Q And what was that extent category?
12 A It was minor.
13 Q Okay, so after you determined the
14 circumstance level and the extent category for
15 each of Respondent's four violations, what do you
16 do next?
17 A So using the Appendix B, this matrix,
18 I go to the column under minor to get the
19 corresponding penalty amount for the circumstance
20 level.
21 Q Okay, thank you, Ms. Tartaglia. So
22 for violation 1, which you just said had a

39

1 Q What is that?
2 A It is 1.08203.
3 Q Okay, thank you very much. So if I
4 understand correctly you -- I guess what do you
5 do with that multiplier, let me say it that way.
6 A I add it to the gravity-based penalty
7 amount. So the amount, when I multiplied it
8 against the gravity-based penalty amount, I get
9 the total, the -- a new total gravity-based
10 penalty amount for those three violations.
11 Q Okay, thank you very much. And what
12 about violation 3? We said we treated that a
13 little bit differently. So how did you -- how
14 did you treat violation 3 here?
15 A Because the -- it had a circumstance
16 level of b, the memo that was created by Susan
17 Bodine, it specified that we needed to use the
18 other policy, penalty policy, which is the
19 Section 1018.
20 Q Okay, is this the footnote that we
21 looked at yesterday in CX 98?
22 A Yes.

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1 Q And this is the conversation we had
2 yesterday where for certain violations, you don't
3 use the matrix that we're looking at here, CX 98,
4 Appendix B. You use a different matrix?

5 A Yes.

6 MR. FUTERMAN: Okay, thank you. Would
7 you please turn to CX 97?

8 And, Mr. Crawley if you would turn the
9 -- if you would publish CX 97, and I'm looking at
10 page 34.

11 Thank you, Mr. Crawley.

12 Ms. Tartaglia, is this the -- is the
13 matrix that we're -- that you used for violation
14 3?

15 THE WITNESS: Yes.

16 BY MR. FUTERMAN:

17 Q Okay, thank you so much. So looking
18 at this matrix, what would the appropriate
19 gravity-based penalty be for violation 3, which
20 you said earlier had a circumstance level of 1b?

21 A The penalty, the appropriate penalty
22 amount under the minor extent is \$2,580.

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1 Q Okay, thank you. And then after you
2 determined that number, what do you do next?

3 A I again multiply the inflation
4 multiplier to the gravity-based penalty --

5 Q Thank you, is that the same multiplier
6 that we used for violations 1,2, and 4?

7 A No.

8 Q It's not.

9 MR. FUTERMAN: Mr. Crawley, would you
10 please publish CX 98. And I'm looking at page 14
11 of 21.

12 (Whereupon, the above-referred to
13 document was marked as Complainant Exhibit No. 98
14 for identification.)

15 MR. FUTERMAN: If you turn to --
16 please turn to page 14, Mr. Crawley. Thank you
17 so much.

18 So, Ms. Tartaglia, what is the
19 appropriate inflation multiplier for violation 3?

20 THE WITNESS: It is 1.64990.

21 BY MR. FUTERMAN:

22 Q Thank you so much. So then after

42

1 determining the appropriate inflation multiplier,
2 what do you do for violation 3?

3 A So I -- I adjusted the gravity-based
4 penalty amount by multiplying this inflation
5 multiplier.

6 Q Okay, so after you do that for all
7 four violations, what do you do next?

8 A I add the two totals for those
9 violations.

10 Q And is that number the total
11 inflation-adjusted gravity-based penalty?

12 A Correct.

13 Q And do you know what that number is in
14 this case?

15 A Yes.

16 Q What is that number?

17 A It's \$20,487.

18 Q Thank you, Ms. Tartaglia. Now, I
19 guess a question for you, so that's a fairly
20 complicated process with, you know, switching
21 back and forth between multiply guidance
22 documents. Do you have these numbers, this

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1 process memorized, or do you have these guidance
2 documents open in front of you as you're walking
3 through this process?

4 A I don't have it memorized, I typically
5 have them open.

6 Q Okay, thank you so much, Ms.
7 Tartaglia. So after calculating that figure,
8 after determining the total inflation-adjusted
9 gravity-based penalty, what do you do next?

10 A So I proceed to the next phase, which
11 -- or next stage, which is adjusting the gravity-
12 based penalty amount.

13 Q Thank you so much.

14 MR. FUTERMAN: And Mr. Crawley, if you
15 would unpublish CX 98, I'm not going to reference
16 it for a moment.

17 BY MR. FUTERMAN:

18 Q Okay, Ms. Tartaglia, so why don't we
19 walk through each of those potential adjustment
20 factors. And let's start with the degree of
21 culpability. Did you consider whether
22 Respondent's degree of culpability -- excuse me,

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1 did you consider Respondent's degree of
 2 culpability when calculating the penalty here?
 3 A Yes, I did.
 4 Q And did you determine that an
 5 adjustment was warranted, based on Respondent's
 6 culpability?
 7 A Yes.
 8 Q So why did you determine that an
 9 adjustment based on Respondent's culpability was
 10 necessary here?
 11 A I had overwhelming evidence showing
 12 the number of times that EPA reached out to him
 13 to come into compliance with the RRP rule. It
 14 goes all the way back to 2015. That's when we --
 15 that's when one of our EPA inspectors made
 16 initial contact with him. Her name was -- the
 17 inspector's name is Laurie (phonetic) Fay.
 18 She spoke with him in detail about the
 19 RRP rule requirements and also scheduled an EPA
 20 inspection with him that same year.
 21 Q Ms. Tartaglia, do you know off the top
 22 of your head how many times EPA attempted to

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1 follow up with a phone call.
 2 Q Okay, so each time EPA sends a letter,
 3 does it always follow up with a phone call?
 4 A Yes.
 5 MR. FUTERMAN: Okay, Ms. Tartaglia, if
 6 you would please at this time turn to what's
 7 previously been marked as CX, Complainant's
 8 Exhibit 80.
 9 (Whereupon, the above-referred to
 10 document was marked as Complainant Exhibit No. 80
 11 for identification.)
 12 MR. FUTERMAN: And, Mr. Crawley, if
 13 you would please publish CX 80. Thank you so
 14 much, Mr. Crawley.
 15 Ms. Tartaglia, do you recognize CX 80?
 16 THE WITNESS: Yes.
 17 BY MR. FUTERMAN:
 18 Q And how do you recognize CX 80?
 19 A This is one of the notice of
 20 inspection letters that was sent to Mr. Rodrigo
 21 Von Marees.
 22 Q So Ms. Tartaglia, is CX 80 one of the

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1 schedule in-person inspections with Respondent
 2 that did not happen?
 3 A I believe it was three times.
 4 Q And before each of those inspections,
 5 does EPA send some sort of communication to the
 6 respondent about that inspection?
 7 A Yes, they do.
 8 Q What does that look like? What is
 9 that -- what is that called?
 10 A It's called the notice of inspection
 11 letter.
 12 Q Okay, and do you know what that
 13 inspection letter, what the notice of inspection
 14 letter tells the respondent?
 15 A It tells them that the date and time
 16 of the inspection, the place. And also it
 17 provides information about the RRP rule
 18 requirements.
 19 Q Okay, and does EPA just send these
 20 letters, or do they follow up with phone calls,
 21 for example?
 22 A They send these letters and then also

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1 things that you considered when considering
 2 Respondent's culpability in this matter?
 3 A Yes, I did.
 4 Q And Ms. Tartaglia, does CX 80 appear
 5 to you to be complete and accurate?
 6 A Yes.
 7 Q Is there anything in CX 80 that
 8 appears incomplete or inaccurate?
 9 A No.
 10 Q And is CX 80 dated?
 11 A Yes.
 12 Q What is the date on CX 80?
 13 A June 27, 2017.
 14 Q So Ms. Tartaglia, is CX 80 an accurate
 15 representation of the notice of inspection letter
 16 that EPA sent to the Respondent on June 27, 2017
 17 and that you considered when calculating the
 18 penalty in this matter?
 19 A Yes.
 20 Q And Ms. Tartaglia, does EPA regularly
 21 write letters such as CX 80?
 22 A Yes.

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1 Q So Ms. Tartaglia, is CX 80 a record
 2 that EPA keeps in its regular course of business?
 3 A Yes.
 4 MR. FUTERMAN: Your Honor, at this
 5 time Complainant moves to admit CX 80.
 6 JUDGE BIRO: Mr. Von Marees, do you
 7 have any objection to the admission of CX 80,
 8 other than on the grounds that it is written in
 9 English?
 10 MR. VON MAREES: Yes, I never received
 11 this letter.
 12 JUDGE BIRO: Okay. Do you have any
 13 other basis for objection?
 14 MR. VON MAREES: No.
 15 JUDGE BIRO: Okay.
 16 MR. VON MAREES: No.
 17 JUDGE BIRO: Over Respondent's
 18 objection, CX 80 will be admitted into the
 19 record.
 20 (Whereupon, the above-referred to
 21 document was received into evidence as
 22 Complainant Exhibit No. 80.)

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1 for identification.)
 2 And, Mr. Crawley, would you please
 3 publish CX 81. Thank you, Mr. Crawley.
 4 Ms. Tartaglia, do recognize CX 81?
 5 THE WITNESS: Yes.
 6 BY MR. FUTERMAN:
 7 Q And what is CX 81, excuse me?
 8 A This is another notice of inspection
 9 letter sent to GreenBuild Design and
 10 Construction, LLC.
 11 Q Thank you. Is CX 81 dated?
 12 A Yes.
 13 Q And what is the date on CX 81?
 14 A September 25, 2017.
 15 Q And is CX 81 addressed?
 16 A Yes.
 17 Q To whom and where is CX 81 addressed?
 18 A To Mr. Rodrigo Diaz, GreenBuild Design
 19 and Construction, LLC, 11221 Olive Lane,
 20 Anchorage, Alaska 99515.
 21 Q And Ms. Tartaglia, is CX 81 one of the
 22 pieces of evidence that you considered when

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1 MR. FUTERMAN: Thank Your Honor.
 2 And, Ms. Tartaglia, is CX 80
 3 addressed?
 4 THE WITNESS: Yes.
 5 BY MR. FUTERMAN:
 6 Q And to whom and where is it addressed?
 7 A It's addressed to Mr. Rodrigo Diaz,
 8 that was his former last name. And the address
 9 is 11221 Olive Lane, Anchorage, Alaska 99515.
 10 Q Thank you, Ms. Tartaglia. And just to
 11 clarify, who was the he in that statement? You
 12 said it was his former last name, who were you
 13 referring to?
 14 A I apologize. That -- I'm referring to
 15 Mr. Rodrigo Von Marees. His former last name was
 16 Mr. Rodrigo Diaz.
 17 MR. FUTERMAN: Thank you, Ms.
 18 Tartaglia. At this time I want to direct your
 19 attention to what's previously been marked as CX
 20 81. Can you please turn to CX 81?
 21 (Whereupon, the above-referred to
 22 document was marked as Complainant Exhibit No. 81)

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1 calculating the penalty in this matter?
 2 A Yes.
 3 Q And Ms. Tartaglia, does CX 81 appear
 4 to you to be complete and accurate?
 5 A Yes.
 6 Q Is there anything that appears
 7 incomplete or inaccurate in CX 81?
 8 A No.
 9 Q And is CX 81 an accurate
 10 representation of the notice of inspection letter
 11 that EPA sent to the Respondent on September 25,
 12 2017 and that you considered when calculating the
 13 penalty in this matter?
 14 A Yes.
 15 Q And Ms. Tartaglia, does EPA regularly
 16 write letters such as CX 81?
 17 A Yes.
 18 Q So is CX 81 a record that EPA keeps
 19 during its regular course of business?
 20 A Yes.
 21 MR. FUTERMAN: Thank you.
 22 Your Honor, at that time, Complainant

1 moves to admit CX 81.
 2 JUDGE BIRO: Mr. Von Marees, do you
 3 have any objection to the admission of CX 81,
 4 other than the fact that it is written in
 5 English?
 6 MR. VON MAREES: I never received that
 7 letter.
 8 JUDGE BIRO: Okay. CX 81 is admitted
 9 into the record over the Respondent's objection.
 10 (Whereupon, the above-referred to
 11 document was received into evidence as
 12 Complainant Exhibit No. 81.)
 13 MR. FUTERMAN: Thank Your Honor.
 14 And Ms. Tartaglia, can you just
 15 confirm, after EPA sent both of these letters, CX
 16 80 and 81, did EPA follow up with a telephone
 17 call to Mr. Von Marees?
 18 THE WITNESS: Yes.
 19 BY MR. FUTERMAN:
 20 Q Thank you. And Ms. Tartaglia, why did
 21 you review CX 80 and 81 with respect to
 22 Respondent's culpability?

1 MR. FUTERMAN: Okay, thank you, Ms.
 2 Tartaglia. At this time I want to direct your
 3 attention to what has previously been marked as
 4 CX 82.
 5 (Whereupon, the above-referred to
 6 document was marked as Complainant Exhibit No. 82
 7 for identification.)
 8 MR. FUTERMAN: Can you please turn to
 9 CX 82, and, Mr. Crawley, would you please publish
 10 CX 82? Thank you.
 11 Ms. Tartaglia, do you recognize CX 82?
 12 THE WITNESS: Yes.
 13 BY MR. FUTERMAN:
 14 Q And what is CX 82?
 15 A This is a telephone log that Rob
 16 Hamlet prepared.
 17 Q And do you know the date that's listed
 18 on CX 82?
 19 A Yes, October 3, 2017.
 20 Q Okay, and is CX 82 one of the pieces
 21 of evidence that you considered when considering
 22 Respondent's culpability in this matter?

1 A Because he failed to show up at the
 2 inspections, the scheduled inspection. And also
 3 this tells me that he was informed about the RRP
 4 rule requirements.
 5 Q Can you say more about that last
 6 point? Why does this tell you that Respondent
 7 was informed about the RRP rules requirements?
 8 A It's because he pulled building
 9 permits on pre-1978 homes. So we were concerned
 10 that he was out of compliance with the RRP rules.
 11 Q Okay, but do these letters or EPA's
 12 telephone conversations following these letters
 13 actually tell the respondent what they're --
 14 what's required of them, of the respondent?
 15 A Yes.
 16 Q Do you know it says? Kind of
 17 paraphrase it.
 18 A Yes. It reminds the respondent that
 19 you need to be in compliance with the RRP rule.
 20 You need to obtain the firm and renovator
 21 certification before you can work on a pre-1978
 22 home.

1 A Yes.
 2 Q Thank you, Ms. Tartaglia. Does CX 82
 3 appear to be complete and accurate to you?
 4 A Yes.
 5 Q Is there anything in CX 82 that
 6 appears incomplete or inaccurate?
 7 A No.
 8 Q Is CX 82 an accurate representation of
 9 a telephone log that EPA recorded on October 3
 10 and 4, 2017 and that you considered when
 11 determining Respondent's culpability in this
 12 matter?
 13 A Yes.
 14 Q And Ms. Tartaglia, does EPA regularly
 15 create telephone logs such as CX 82?
 16 A Yes.
 17 Q So Ms. Tartaglia, is CX 82 a record
 18 that EPA keeps during its regular course of
 19 business?
 20 A Yes.
 21 MR. FUTERMAN: Thank you. Your Honor,
 22 at this time Complainant moves to admit CX 82.

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1 JUDGE BIRO: Ms. Tartaglia, how did
2 you get a copy of CX 82?

3 THE WITNESS: It was in the file, a
4 case file.

5 JUDGE BIRO: And this a -- a case file
6 that you and Mr. Hamlet both had access to?

7 THE WITNESS: That's correct.

8 JUDGE BIRO: Are these type of records
9 normally kept in such a file?

10 THE WITNESS: Yes.

11 JUDGE BIRO: Do you have any personal
12 knowledge of Mr. Hamlet's handwriting?

13 THE WITNESS: Yes, he has written some
14 notes before, so I recognize his writing, his
15 handwriting.

16 JUDGE BIRO: And is that his
17 handwriting on this document?

18 THE WITNESS: Yes, Your Honor.

19 JUDGE BIRO: Okay, Mr. Von Marees, do
20 you have any objection to CX 82 being admitted
21 into the record, other than the fact that it's
22 written in English?

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1 you're considering this when you have the case
2 file open in front of you, if you have questions
3 about what's in the case file such as this
4 telephone log, do you have access to Mr. Hamlet
5 that you can go to him and have a conversation
6 about this sort of information?

7 A Yes.

8 Q So if you had questions about this
9 telephone log, would you have been able to speak
10 with Mr. Hamlet directly about those questions?

11 A Yes, that's correct.

12 Q Thank you, Ms. Tartaglia. And why did
13 you consider CX82 with respect to Respondent's
14 culpability?

15 A Again our EPA inspectors made an
16 attempt to schedule an inspection with Mr. Von
17 Marees to discuss the RRP rule requirements.

18 Q Okay. And what does CX82 tell you
19 about Respondent's culpability here?

20 A He -- he was aware of the -- of the
21 fact that the EPA wanted to talk to him about the
22 RRP rule requirements.

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1 MR. VON MAREES: Yes, in this
2 telephone log -- yes, in this phone log there's a
3 phone number there that does not have a voice
4 mail. Give me a second, I'm trying to understand
5 this a little bit. Left a message.

6 No -- this is -- no, this is wrong,
7 this phone number has no kind of access to voice
8 mail. Together -- together with that, my last
9 name was changed in 2016 when I became a citizen
10 in 2016, when I changed my citizenship to
11 becoming a citizen.

12 So this is -- so this is incorrect.
13 This is not correct.

14 JUDGE BIRO: Okay. So over
15 Respondent's objection I'm going to admit
16 Complainant's Exhibit 82 into the record.
17 (Whereupon, the above-referred to
18 document was received into evidence as
19 Complainant Exhibit No. 82.)

20 MR. FUTERMAN: Thank you, Your Honor.

21 BY MR. FUTERMAN:

22 Q Ms. Tartaglia, during the time that

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1 Q Thank you, Ms. Tartaglia. And when
2 you say he in that sentence, who are you
3 referring to?

4 A Mr. Rodrigo Von Marees. Sorry.

5 Q Thank you, Ms. Tartaglia. You're
6 fine. At this time I want to direct your
7 attention to CX 83.

8 (Whereupon, the above-referred to
9 document was marked as Complainant Exhibit No. 83
10 for identification.)

11 MR. FUTERMAN: Can you please turn to
12 CX83?

13 And, Mr. Crawley, if you would please
14 publish CX83?

15 Thank you, Mr. Crawley.

16 BY MR. FUTERMAN:

17 Q Ms. Tartaglia, do you recognize CX83?

18 A Yes.

19 Q And what is CX83?

20 A This is the inspection report for
21 GreenBuild Design & Construction, LLC.

22 Q And what date was that inspection

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1 supposed to occur?
 2 A On October 12th, 2017.
 3 Q And, Ms. Tartaglia, do you know did
 4 that inspection occur on October 12th, 2017?
 5 A It did not happen. He was a no-show.
 6 Q Who was a no-show, Ms. Tartaglia?
 7 A Mr. Rodrigo Von Marees.
 8 Q Thank you, Ms. Tartaglia. And CX83
 9 one of the pieces of evidence that you considered
 10 when determining Respondent's culpability in this
 11 matter?
 12 A Yes.
 13 Q And can you please take a moment to
 14 look over CX83? I know it's a few pages long.
 15 (Pause.)
 16 A I'm done.
 17 Q Thank you, Ms. Tartaglia. Does CX83
 18 appear to you to be complete and accurate?
 19 A Yes.
 20 Q Is there anything that appears
 21 incomplete or inaccurate in CX83?
 22 A No.

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1 A Yes.
 2 Q So, Ms. Tartaglia, is CX83 a record
 3 that EPA keeps during its regular course of
 4 business?
 5 A Yes.
 6 Q Thank you.
 7 MR. FUTERMAN: Your Honor, at this
 8 time Complainant moves to admit CX83.
 9 JUDGE BIRO: Okay. Mr. Von Marees, do
 10 you have any objection to CX83 other than the
 11 fact that it's written in English?
 12 MR. FUTERMAN: I don't believe he's
 13 hearing you, ma'am.
 14 INTERPRETER AQUINO: Can you guys hear
 15 me?
 16 MR. FUTERMAN: I can hear you, yes,
 17 ma'am.
 18 INTERPRETER AQUINO: Yes, he said he
 19 can hear.
 20 MR. VON MAREES: Yes. Yes, I have an
 21 objection to this inspection. I never received
 22 an invitation to this inspection so obviously I

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1 Q And is CX83 signed?
 2 A Yes.
 3 Q By whom is it signed?
 4 A It's -- it's signed by the inspector,
 5 Rob Hamlet on March 7th, 2018; by the peer
 6 reviewer Laurie Fay on March 8th, 2018; and by
 7 myself Maria Tartaglia on March 8th, 2018.
 8 Q Okay. And why did you sign this
 9 document?
 10 A As -- as the quality assurance
 11 reviewer it's my job to make sure that the
 12 information in the inspection report is accurate
 13 and complete.
 14 Q Thank you, Ms. Tartaglia. And is CX83
 15 an accurate representation of the record keeping
 16 and reporting inspection report that EPA drafted
 17 after the attempted October 12th, 2017 inspection
 18 and that you considered when calculating your
 19 penalty in this matter?
 20 A Yes.
 21 Q And, Ms. Tartaglia, does EPA regularly
 22 prepare inspection reports such CX83?

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1 was not able to make it to this inspection.
 2 JUDGE BIRO: Okay. CX83 is admitted
 3 into the record over the Respondent's objection.
 4 (Whereupon, the above-referred to
 5 document was received into evidence as
 6 Complainant Exhibit No. 83.)
 7 MR. FUTERMAN: Thank you, Your Honor.
 8 BY MR. FUTERMAN:
 9 Q And, Ms. Tartaglia, why did you
 10 consider CX83 with respect to Respondent's
 11 culpability?
 12 A In -- in the report it noted that Mr.
 13 Von Marees was educated on -- on the RRP rule
 14 requirements. We told him that he needed to be
 15 firm certified and renovator certified before he
 16 can work on a pre-1978 home.
 17 Q Okay. Thank you, Ms. Tartaglia. And
 18 earlier we spoke about CX85, which was the letter
 19 that you sent to Mr. Von Marees after your
 20 telephone call.
 21 A Yes.
 22 Q Did you also consider CX85 with

1 respect to Respondent's culpability?
 2 A Yes, I did.
 3 Q So what does CX85 tell you about
 4 Respondent's culpability?
 5 A It tells me that he -- Mr. Von Marees,
 6 was aware of the RRP rule requirements. I -- I
 7 spoke to him in depth about the RRP rule
 8 requirements, that he needed to be firm certified
 9 and renovator certified before he can work on a
 10 pre-1978 home.
 11 Q Thank you, Ms. Tartaglia. At this
 12 time would you please turn to CX87?
 13 (Whereupon, the above-referred to
 14 document was marked as Complainant Exhibit No. 87
 15 for identification.)
 16 MR. FUTERMAN: And, Mr. Crawley, if
 17 you would please publish CX87?
 18 BY MR. FUTERMAN:
 19 Q Ms. Tartaglia, do you recognize CX87?
 20 A Yes, I do.
 21 Q And what is CX87?
 22 A This is a building permit that was

1 Q So, Ms. Tartaglia, I see here that on
 2 July 30th, 2018 there were some reviews
 3 conducted, but I don't see an issue date. Do you
 4 know -- I guess how do you know when this
 5 building permit was issued?
 6 A So typically when the permit
 7 technician receives an application, it goes under
 8 this -- this section and it's labeled as
 9 structural. And so they will review it and
 10 complete that review. And the date that it's
 11 completed, that would be the issue date.
 12 Q Okay. And that technician -- is it
 13 safe to assume they worked for the City of
 14 Anchorage?
 15 A They would -- yes, they would be
 16 working for the Municipality of Anchorage
 17 Building Department.
 18 Q Okay. Thank you, Ms. Tartaglia. And,
 19 Ms. Tartaglia, is CX87 the type of document that
 20 EPA regularly obtains during its investigation
 21 into companies that it believes violated TSCA or
 22 the RRP rule?

1 issued by the Municipality of Anchorage Building
 2 Department.
 3 Q Okay. Do you know for what address
 4 this building permit pertains to?
 5 A Yes, I do.
 6 Q What is that address?
 7 A It is 4220 Tahoe Drive, Anchorage,
 8 Alaska.
 9 Q Thank you. And do you know who
 10 obtained this building permit?
 11 A Yes, I do.
 12 Q And who is that?
 13 A GreenBuild Design & Construction, LLC.
 14 Q Thank you.
 15 MR. FUTERMAN: Mr. Crawley, if you
 16 would just scroll down to the bottom of this
 17 page.
 18 BY MR. FUTERMAN:
 19 Q And, Ms. Tartaglia, do you know when
 20 this building permit was obtained?
 21 A Yes, it was obtained on July 30th,
 22 2018.

1 A Yes.
 2 Q So is CX87 a record that EPA generates
 3 during its regular course of business?
 4 A Yes.
 5 Q Thank you.
 6 MR. FUTERMAN: Your Honor, Complainant
 7 moves to admit CX87.
 8 JUDGE BIRO: Mr. Von Marees, did you
 9 have any objection to the admission of CX87 other
 10 than the fact that the document is written in
 11 English?
 12 MR. VON MAREES: Yes, this is totally
 13 out place. Yes, it doesn't -- no place does it
 14 say it's illegal to get a permit on this
 15 document.
 16 JUDGE BIRO: Okay. Over Respondent's
 17 objection CX87 is admitted into the record.
 18 (Whereupon, the above-referred to
 19 document was received into evidence as
 20 Complainant Exhibit No. 87.)
 21 MR. FUTERMAN: Thank you, Your Honor.
 22 And, Ms. Tartaglia, would you please

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1 turn to CX88?
 2 (Whereupon, the above-referred to
 3 document was marked as Complainant Exhibit No. 88
 4 for identification.)
 5 MR. FUTERMAN: And, Mr. Crawley, would
 6 you please publish CX88?
 7 BY MR. FUTERMAN:
 8 Q Ms. Tartaglia, do you recognize this
 9 A Yes, I do.
 10 Q What is CX88?
 11 A It's the public inquiry parcel details
 12 from the website Municipality of Anchorage.
 13 Q And what is the subject property of
 14 CX88?
 15 A Yes, it is again 4220 Tahoe Drive,
 16 Anchorage, Alaska.
 17 Q Thank you, Ms. Tartaglia. And, Ms.
 18 Tartaglia, what information is CX88 providing to
 19 you about 4220 Tahoe Drive that is relevant in
 20 this matter?
 21 A Yes, so what I'm looking for is the
 22 year that the property was built. So I -- and I

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1 JUDGE BIRO: Ms. Tartaglia, did you
 2 personally obtain this record?
 3 THE WITNESS: Yes.
 4 JUDGE BIRO: From what website did you
 5 obtain it?
 6 THE WITNESS: From the Municipality of
 7 Anchorage.
 8 JUDGE BIRO: And is this a website
 9 that you routinely access?
 10 THE WITNESS: Correct. Yes, ma'am.
 11 JUDGE BIRO: And do you routinely find
 12 the information on this website accurate?
 13 THE WITNESS: Yes. This is kind of
 14 like the assessor website, so it -- it provides
 15 property details of the target property in
 16 question.
 17 JUDGE BIRO: Okay.
 18 Mr. Von Marees, do you have any
 19 objection to Complainant's Exhibit 88 being
 20 admitted into the record other than the fact that
 21 it's written in English?
 22 INTERPRETER LOPEZ: He's not answering

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1 see under improvement data that shows the year
 2 built as 1969. And that tells me this is a pre-
 3 1978 property.
 4 Q Thank you, Ms. Tartaglia. And, Ms.
 5 Tartaglia, did you consider CX88 when considering
 6 Respondent's culpability in this matter?
 7 A Yes.
 8 Q Ms. Tartaglia, is CX88 an accurate
 9 representation of your independent memory of the
 10 public inquiry parcel that you obtained when
 11 calculating the penalty in this matter?
 12 A Yes.
 13 Q And CX88 the type of record that EPA
 14 regularly obtains during its investigations into
 15 entities that it believes violated TSCA and the
 16 RRP rule?
 17 A Yes.
 18 Q So is CX88 a record that EPA obtains
 19 during its regular course of business?
 20 A Yes.
 21 MR. FUTERMAN: Your Honor, Complainant
 22 moves to admit CX88.

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1 back.
 2 MR. FUTERMAN: Mr. Von Marees, I
 3 believe you're on mute.
 4 MR. VON MAREES: Do you hear me?
 5 MR. FUTERMAN: Yes.
 6 MR. VON MAREES: Yes, I object because
 7 this permit was taken out by the owner of the
 8 Turnagain property when I was told that I had to
 9 get a permit. If you look at the date, that date
 10 is -- if you look at the date, we weren't working
 11 in this house until after I was informed that I
 12 had to take out that information, get that and
 13 get that information.
 14 JUDGE BIRO: I'm sorry, Mr. Von
 15 Marees, I don't understand what you're telling me
 16 here. This doesn't seem to relate to the
 17 Turnagain property. It relates to 4220 Tahoe.
 18 MR. VON MAREES: Tahoe, yes.
 19 JUDGE BIRO: Tahoe.
 20 MR. VON MAREES: Tahoe.
 21 JUDGE BIRO: Right. So tell --
 22 MR. VON MAREES: The same owner of

1 Turnagain is the owner of this house, Tahoe. He
 2 flips houses. He told me to get the permit in
 3 order to work on the Turnagain house, but we
 4 never did work on that house after I got my
 5 permit.
 6 JUDGE BIRO: So you --
 7 MR. VON MAREES: Until I finally got
 8 my certification.
 9 JUDGE BIRO: Okay. So you pulled the
 10 permit to do renovations on 4220 Tahoe, but you
 11 did not do the work on that property until after
 12 you completed the work on the Turnagain property?
 13 MR. VON MAREES: After I received my
 14 permit, my renovator permit, because they told me
 15 that I couldn't do any jobs on any properties
 16 built before 1978.
 17 JUDGE BIRO: Okay.
 18 MR. VON MAREES: So I waited and after
 19 I received my certification, then I was able to
 20 start work on that property. This has nothing to
 21 do with that.
 22 JUDGE BIRO: Okay. I understand your

1 Q And, Ms. Tartaglia, who -- sorry. Who
 2 is the he in that sentence?
 3 A Mr. Von Marees.
 4 Q Thank you, Ms. Tartaglia. Did you
 5 have more to say? I'm sorry I interrupted you.
 6 A Yes, I just wanted to add that the RRP
 7 rule requirement states that before you can even
 8 offer to perform renovation work on a pre-1978
 9 home; in this case he offered to work on this
 10 pre-1978 home, he needed to be firm certified.
 11 Q Okay. And do you know, Ms. Tartaglia,
 12 when Respondent obtained CX87 on about July 30th,
 13 2018, was Respondent EPA firm certified?
 14 A No.
 15 Q It was not? Do you know when he
 16 became EPA firm certified?
 17 A I believe it was August. I believe it
 18 was the second week of August 2018.
 19 Q Okay. Thank you, Ms. Tartaglia. So
 20 I guess are you saying that as a result of
 21 pulling this building permit five days after the
 22 EPA inspected Respondent at the Turnagain

1 objection. I'm going to admit Complainant's
 2 Exhibit 88 over your objection.
 3 (Whereupon, the above-referred to
 4 document was received into evidence as
 5 Complainant Exhibit No. 88.)
 6 MR. FUTERMAN: Thank you, Your Honor.
 7 BY MR. FUTERMAN:
 8 Q So, Ms. Tartaglia, I guess can you
 9 remind me when this building permit, CX87 -- when
 10 it was obtained?
 11 A Yes, it was obtained July 30th, 2018.
 12 Q Okay. And do you know off the top of
 13 your head when the EPA's inspection of the
 14 Turnagain property took place?
 15 A Yes, that would be July 25th, 2018.
 16 Q Okay. So what does that say to you
 17 with respect to Respondent's culpability?
 18 A That tells me that five days after our
 19 EPA inspector showed up at his work site and
 20 talked to him about the reimbursement requests he
 21 pulled another building permit on a pre-1978
 22 home. So --

1 property the Respondent committed another
 2 violation of the RRP rule?
 3 A Yes, that's correct.
 4 Q Okay. Thank you, Ms. Tartaglia. And
 5 did you consider anything else when considering
 6 Respondent's culpability in this matter?
 7 A Let's see. Just the phone
 8 conversations I had with him and the letter that
 9 I sent to him restating what we talked about
 10 during our phone conversation.
 11 Q Okay. Thank you, Ms. Tartaglia. So
 12 after reviewing all of this information: the two
 13 notices of inspection, the follow-on phone calls
 14 after those notices of inspection, the telephone
 15 call between Mr. Hamlet and Respondent, the
 16 inspection report, your telephone call with
 17 Respondent, your advisory letter, and these
 18 building permits, what did you determine about
 19 Respondent's culpability?
 20 A I determined that an increase was
 21 warranted for the degree of culpability.
 22 Q Okay. So based on all of that what

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1 did you -- what increase did you determine? What
2 percentage did you determine was the appropriate
3 increase in this case?

4 A I determined the maximum of 25
5 percent.

6 Q So why 25 percent? Why the maximum?

7 A It's because I had information in
8 front of me showing that the Respondent Mr. Von
9 Marees had prior knowledge of the RRP rule
10 requirements.

11 Q Okay. Thank you, Ms. Tartaglia. So
12 let's move onto the next possible adjustment
13 factor, which is Respondent's history of prior
14 violations. Did you determine that Respondent
15 had a history of prior violations?

16 A No.

17 Q Respondent did not have a history of
18 prior violations? But I thought that we were
19 just talking this whole time about previous
20 issues, previous violations that Respondent
21 committed.

22 A Yes, we did.

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1 about the next penalty adjustment factor, which
2 is Respondent's ability to pay/continue in
3 business. Did you consider this factor when
4 calculating the penalty here?

5 A Yes, I did.

6 Q So earlier you mentioned that when you
7 consider a respondent's ability to pay/continue
8 in business, that you ask the Region 10 library
9 to get publicly-available information. Did you
10 do that here?

11 A I did.

12 Q And was the librarian able to find you
13 any information on the Respondent?

14 A Yes, they did.

15 Q What did the librarian find you?

16 A So they provided me three reports.
17 Two of them were the WestLaw investigative report
18 and the third report was a Dun & Bradstreet
19 report.

20 Q Okay. Thank you. Ms. Tartaglia,
21 would you please turn to the exhibit that's
22 previously been marked as CX76?

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1 Q So why were you unable to consider
2 those when considering the Respondent's history
3 of prior violations?

4 A So in order to -- in order for it to
5 me an enforcement action there has to be a formal
6 enforcement action against the Respondent. In
7 reviewing -- when I did my research there was no
8 prior violations against Mr. Von Marees or
9 GreenBuild.

10 Q Okay. So does that mean that
11 Respondent's culpability, that factor was the
12 only mechanism that -- through which you were
13 able to adjust the penalty based on all of these
14 previous issues and based on the fact that
15 Respondent violated the RRP rule five days after
16 the inspection?

17 A Yes.

18 Q Okay. So did you ultimately adjust
19 the penalty at all based on Respondent's history
20 of prior violations?

21 A I did not.

22 Q Okay. Thank you. So next let's talk

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1 (Whereupon, the above-referred to
2 document was marked as Complainant Exhibit No. 76
3 for identification.)

4 MR. FUTERMAN: And, Mr. Crawley, would
5 you please publish CX76?

6 Thank you, Mr. Crawley.

7 BY MR. FUTERMAN:

8 Q Ms. Tartaglia, do you recognize CX76?

9 A Yes, I do.

10 Q And how do you recognize CX76?

11 A This is one of the reports that was
12 provided to me by the library.

13 Q Okay, Ms. Tartaglia. So what
14 specifically is CX76?

15 A So the CX76 is the Dun & Bradstreet
16 report.

17 Q Okay. And is CX76 one of the
18 documents that the library provided to you
19 regarding Respondent's ability to pay/continue in
20 business?

21 A Yes.

22 Q And can you please take a moment to

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1 look over CX76?
 2 A Yes.
 3 I'm done.
 4 Q Thank you, Ms. Tartaglia. Does CX76
 5 appear complete and accurate to you?
 6 A Yes.
 7 Q Is there anything that appears
 8 incomplete or inaccurate in CX76?
 9 A No.
 10 Q And is CX76 an accurate representation
 11 of the Dun & Bradstreet's report that the Region
 12 10 library provided to you about Respondent's
 13 ability to pay/continue in business?
 14 A Yes.
 15 Q So, Ms. Tartaglia, is CX76 a record
 16 that EPA keeps during its regular course of
 17 business?
 18 A Yes.
 19 Q Thank you, Ms. Tartaglia.
 20 MR. FUTERMAN: Your Honor, at this
 21 time Complainant moves to admit CX76.
 22 JUDGE BIRO: Mr. Von Marees, do you

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1 BY MR. FUTERMAN:
 2 Q Ms. Tartaglia, do you recognize CX77?
 3 A I do.
 4 Q And how do you recognized CX77?
 5 A This is one of the -- the second
 6 report that the EPA library provided to me.
 7 Q Okay. So what is CX77?
 8 A It is the WestLaw investigative report
 9 on GreenBuild Design & Construction, LLC.
 10 Q And is CX77 one of the documents that
 11 the Region 10 library provided to you regarding
 12 Respondent's ability to pay/continue in business?
 13 A Yes.
 14 Q And can you please take a moment to
 15 look over CX77?
 16 A Yes.
 17 I'm done.
 18 Q Ms. Tartaglia, does CX77 appear to you
 19 to be complete and accurate?
 20 A Yes.
 21 Q Is there anything in CX77 that appears
 22 incomplete or inaccurate?

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1 have any objection to Complainant's Exhibit CX76
 2 other than the fact that it's drafted in English?
 3 MR. VON MAREES: Yes, this has
 4 erroneous information on it though. The address
 5 here is not the one that corresponds to my
 6 office.
 7 JUDGE BIRO: Okay. Over Respondent's
 8 objection we're going to admit CX76 into the
 9 record.
 10 (Whereupon, the above-referred to
 11 document was received into evidence as
 12 Complainant Exhibit No. 76.)
 13 MR. FUTERMAN: Thank you, Your Honor.
 14 And, Ms. Tartaglia, would you (audio
 15 interference) to the exhibit that's previously
 16 been marked as CX77?
 17 (Whereupon, the above-referred to
 18 document was marked as Complainant Exhibit No. 77
 19 for identification.)
 20 MR. FUTERMAN: And, Mr. Crawley, would
 21 you please publish CX77?
 22 Thank you.

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1 A No.
 2 Q And is CX77 an accurate representation
 3 of the WestLaw company investigator report that
 4 the Region 10 library provided to you regarding
 5 Respondent's ability to pay/continue in business?
 6 A Yes.
 7 Q And, Ms. Tartaglia, is CX77 a record
 8 that EPA keeps during its regular course of
 9 business?
 10 A Yes.
 11 Q Thank you.
 12 MR. FUTERMAN: Your Honor, at this
 13 time Complainant moves to admit CX77.
 14 JUDGE BIRO: Mr. Von Marees, do you
 15 have any objection to CX77 other than the fact
 16 that it's written in English?
 17 MR. VON MAREES: Yes, that also has
 18 erroneous information.
 19 JUDGE BIRO: Tell me what's erroneous
 20 about it.
 21 MR. VON MAREES: Addresses and names.
 22 JUDGE BIRO: Which addresses are

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1 incorrect?
 2 MR. VON MAREES: 1611 George Bill
 3 Circle. Omar Pena, the other person there, I
 4 don't who they are. I don't know who they are.
 5 JUDGE BIRO: What is your correct
 6 business address?
 7 MR. VON MAREES: 11221 Olive Lane,
 8 Anchorage.
 9 JUDGE BIRO: What else is wrong with
 10 this document?
 11 MR. VON MAREES: Some people's names.
 12 Douglass, Omar Pena, Bourne. I don't know who
 13 they are.
 14 JUDGE BIRO: Okay. Over Respondent's
 15 objection we're going to admit CX77 into the
 16 record.
 17 (Whereupon, the above-referred to
 18 document was received into evidence as
 19 Complainant Exhibit No. 77.)
 20 MR. FUTERMAN: Thank you, Your Honor.
 21 BY MR. FUTERMAN:
 22 Q Ms. Tartaglia, when you're looking at

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1 reports such as CX76 and 77 do you -- are you
 2 confident that all of the information contained
 3 in these reports are 100 percent accurate?
 4 A No.
 5 Q So why not? Why are they not 100
 6 percent accurate?
 7 A Because it's not a -- a true picture
 8 of the financial status of GreenBuild Design &
 9 Construction, LLC.
 10 Q Are these reports based on just
 11 publicly-available information, whatever the
 12 databases were able to find?
 13 A Correct.
 14 Q And do they report include information
 15 on similar addresses, similar business names,
 16 people that may or may not be related to the
 17 respondent?
 18 A Yes.
 19 Q So are these reports just kind of
 20 general summaries about whatever publicly-
 21 available information is out there?
 22 A Yes.

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1 Q Thank you, Ms. Tartaglia. At this
 2 time I would like to direct your attention to an
 3 exhibit that's previously been marked CX78.
 4 Would you please turn to CX78?
 5 (Whereupon, the above-referred to
 6 document was marked as Complainant Exhibit No. 78
 7 for identification.)
 8 MR. FUTERMAN: And, Mr. Crawley, would
 9 you please publish CX78?
 10 BY MR. FUTERMAN:
 11 Q Ms. Tartaglia, do you recognize CX78?
 12 A Yes.
 13 Q What is CX78, Ms. Tartaglia?
 14 A This is the other report that's
 15 provided by the EPA library.
 16 Q So, Ms. Tartaglia, is CX78 one of the
 17 documents that the library provided to you
 18 regarding Respondent's ability to pay/continue in
 19 business?
 20 A Yes.
 21 Q And, Ms. Tartaglia, does CX78 appear
 22 to you to be an accurate representation of the

87

1 report that the Region 10 library provided
 2 regarding Respondent's ability to pay/continue in
 3 business?
 4 A Yes.
 5 Q And, Ms. Tartaglia, is CX78 a record
 6 that EPA generates during its regular course of
 7 business?
 8 A Yes.
 9 Q Thank you, Ms. Tartaglia.
 10 MR. FUTERMAN: Your Honor, Complainant
 11 moves to admit CX 78.
 12 JUDGE BIRO: Mr. Von Marees, do you
 13 have any objection to CX78 being admitted into
 14 the record other than the fact that it's written
 15 in English?
 16 MR. VON MAREES: Yes, there's some
 17 people written down here that have nothing to do
 18 with me. Company that's not mine. Some legal
 19 charges that have nothing to do with me. For
 20 example, Mr. Rodrigo Alejandro Diaz, who's that?
 21 He's from the State of Oregon. Why does that
 22 person show up in this file? Criminal driving.

1 Another example now. Another example is
 2 GreenBuild in State of Washington.
 3 JUDGE BIRO: Okay. Over Respondent's
 4 objection I'm going to admit Complainant's
 5 Exhibit 78 into the record.
 6 (Whereupon, the above-referred to
 7 document was received into evidence as
 8 Complainant Exhibit No. 78.)
 9 MR. FUTERMAN: Thank you, Your Honor.
 10 BY MR. FUTERMAN:
 11 Q Ms. Tartaglia, looking at CX76 and 77
 12 what information does CX76 and 77 provide to you
 13 regarding Respondent's ability to pay/continue in
 14 business, just kind of generally speaking?
 15 A It provides me the -- the financial
 16 information that -- that is either an estimate.
 17 And it tells me that -- that they are able to
 18 continue in business. And when I say they,
 19 GreenBuild. So they have the ability to pay the
 20 proposed penalty amount that I come up with.
 21 Q Okay. Thank you, Ms. Tartaglia. So
 22 what -- I guess now specifically speaking what

1 - it's -- it provides a summary of the -- their
 2 liens and judgments, criminal records. And again
 3 I don't consider this when I'm analyzing the
 4 ability to pay factor.
 5 Q Okay. So let me just clarify. If I
 6 understand correctly, CX76 and 77 are providing
 7 you information about the estimated salary, the
 8 estimated money coming in --
 9 A Yes.
 10 Q -- while CX78 is providing you
 11 information about liens and things of that
 12 nature, potential kind of debts of the company.
 13 Is that an accurate summary?
 14 A Yes.
 15 Q Thank you. Now, Ms. Tartaglia, I
 16 notice in CX78 that there is a lot of information
 17 about --
 18 MR. FUTERMAN: Sorry, Your Honor, it
 19 looks like I'm freezing over here and I'm not
 20 sure if you can hear me or not.
 21 JUDGE BIRO: I can still hear you.
 22 MR. FUTERMAN: Okay. I'm going to

1 does CX76 and CX77 suggest were Respondent's
 2 annual sales when these reports were generated?
 3 A So for the D&B report it's suggestive
 4 that they had \$108,000 in -- in annual sales.
 5 Q Okay. And then the question I asked
 6 you a moment ago I'm going to repeat again. So
 7 do you assume when you look at this information
 8 that that number is 100 percent accurate or are
 9 you taking that with a bit of a grain of salt?
 10 A I'm taking it with a bit of grain of
 11 salt.
 12 Q And why is that?
 13 A Because again this is not a true
 14 picture of the financial status of GreenBuild
 15 Design & Construction, LLC.
 16 Q So what is it instead of that?
 17 A It's just an estimate.
 18 Q Okay. And now kind of focusing on
 19 CX78, what sort of general information does CX78
 20 provide you?
 21 A It's -- it's providing me detailed
 22 information about the company's business. It's -

1 keep going until something else -- my computer is
 2 freezing, but we'll keep moving through.
 3 BY MR. FUTERMAN:
 4 Q So, Ms. Tartaglia, it looks to me in
 5 looking at CX78 that there is a lot of
 6 information about criminal history, driving
 7 records, things of that nature. Is that
 8 information that you consider at all during this
 9 process?
 10 A No.
 11 Q Does that information have any bearing
 12 on why you are using this document?
 13 A No.
 14 Q Okay. So when looking at CX76, 77,
 15 and 78 what are you able to conclude with respect
 16 to Respondent's ability to pay/continue in
 17 business?
 18 A I concluded that I will not use the
 19 ability to pay factor and I'm not going to adjust
 20 the gravity-based penalty amount.
 21 Q Okay. Thank you, Ms. Tartaglia.
 22 Would you please turn to an exhibit that's

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1 previously been marked as CX8?
 2 MR. FUTERMAN: And, Mr. Crawley, would
 3 you please publish CX8?
 4 Your Honor, I'm looking at the clock
 5 and I know that Mr. Von Marees needs to leave.
 6 My intent would be to just push straight through
 7 until the hour, if that's acceptable to you.
 8 JUDGE BIRO: That's fine.
 9 MR. FUTERMAN: Thank you.
 10 BY MR. FUTERMAN:
 11 Q Ms. Tartaglia, do you recognize CX8?
 12 A Yes, I do.
 13 Q And how do you recognize CX8?
 14 A This is the contract between the owner
 15 of 2208 Turnagain Parkway and -- and the
 16 contractor, GreenBuild Design & Construction,
 17 LLC.
 18 Q Okay. Thank you, Ms. Tartaglia. And
 19 did you review CX8 when considering Respondent's
 20 ability to pay/continue in business?
 21 A Yes, I did.
 22 Q And what information does CX8 provide

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1 receive about \$127,000 from the homeowner once
 2 the work is completed.
 3 Q Okay. Thank you, Ms. Tartaglia. And
 4 would you please now turn to CX9, an exhibit
 5 that's previously been marked as CX9?
 6 MR. FUTERMAN: And, Mr. Crawley, if
 7 you would please publish CX9?
 8 Thank you.
 9 BY MR. FUTERMAN:
 10 Q Ms. Tartaglia, do you recognize CX9?
 11 A Yes.
 12 Q And did you review CX9 when
 13 considering Respondent's ability to pay/continue
 14 in business?
 15 A Yes, I did.
 16 Q So what information is CX9 providing
 17 to you about Respondent's ability to pay/continue
 18 in business?
 19 A Again this is the invoice which shows
 20 payment made -- made to him when he completed the
 21 work.
 22 MR. FUTERMAN: Okay. And, Mr.

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1 to you regarding Respondent's ability to
 2 pay/continue in business?
 3 A It's telling me that he's receiving
 4 money from the homeowner.
 5 Q And where specifically are you
 6 looking?
 7 A I am looking on page -- I apologize.
 8 Q You're fine.
 9 A It would be under Exhibit B on page 9
 10 of 19 CFC.
 11 MR. FUTERMAN: Okay. Mr. Crawley,
 12 would you please scroll down to page 9?
 13 Mr. Crawley, I'm not sure if you heard
 14 me, but would you please scroll down to page 9?
 15 Okay. I'm going to continue, Your
 16 Honor, unless there's an issue.
 17 JUDGE BIRO: Go ahead.
 18 BY MR. FUTERMAN:
 19 Q Ms. Tartaglia, what information is
 20 page 9 providing to you about Respondent's
 21 ability to pay/continue in business?
 22 A So it's showing me that he's going to

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1 Crawley, if you'd please scroll down to the next
 2 page?
 3 BY MR. FUTERMAN:
 4 Q Ms. Tartaglia, do you know how much
 5 Respondent was actually paid for his work on the
 6 Turnagain property?
 7 A Yes.
 8 Q And how much was Respondent actually
 9 paid for his work on the Turnagain property?
 10 A \$114,917.52.
 11 MR. FUTERMAN: Mr. Crawley, would you
 12 scroll down so we could see the bottom of that
 13 payment summary section?
 14 Thank you so much.
 15 BY MR. FUTERMAN:
 16 Q And was there an amount that was still
 17 left owed on this contract?
 18 A Yes.
 19 Q And what was that?
 20 A \$13,662.48.
 21 Q Thank you, Ms. Tartaglia. So I'm an
 22 attorney, not a mathematician, but I'm just going

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1 to estimate this is about \$130,000. Is that
 2 accurate kind of summary?
 3 A Yes.
 4 Q Okay. So just to be clear, Ms.
 5 Tartaglia, based on your knowledge of this
 6 industry and your experience in this sort of
 7 universe do you know does this mean that
 8 Respondent actually made, put in his pocket
 9 \$130,000 for his work on the Turnagain property?
 10 A No.
 11 Q And is that --
 12 (Simultaneous speaking.)
 13 Q -- this money -- okay. And, Ms.
 14 Tartaglia, is that --
 15 MR. VON MAREES: That's out of --
 16 that's out of place. That's out of place.
 17 JUDGE BIRO: Mr. Von Marees, are you
 18 objecting to the question?
 19 MR. VON MAREES: Yes.
 20 JUDGE BIRO: And what's your objection
 21 to the question?
 22 MR. VON MAREES: Because they're

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1 A It tells me that he's receiving some
 2 of the money into his -- in his own pocket.
 3 Q Thank you, Ms. Tartaglia. And during
 4 this time period around when the Turnagain
 5 property renovation was occurring are you aware
 6 whether Respondent was working fairly regularly?
 7 A Yes.
 8 Q And how are you aware of that
 9 information?
 10 A It's based on the building permits
 11 that he was obtaining.
 12 Q Okay. Thank you, Ms. Tartaglia. And
 13 can you please just turn briefly to CX59 and 60?
 14 If you would just kind of look at those?
 15 (Whereupon, the above-referred to
 16 documents were marked as Complainant Exhibit Nos.
 17 59 and 60 for identification.)
 18 MR. FUTERMAN: Mr. Crawley, you're
 19 welcome to publish those. I only have one
 20 question about CX59 and 60.
 21 BY MR. FUTERMAN:
 22 Q Ms. Tartaglia, do you recognize CX59

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1 trying to say that I put -- made profits of
 2 \$114,000. In this project I actually lost money.
 3 JUDGE BIRO: Okay. I actually think
 4 that they're trying to make your point.
 5 MR. VON MAREES: Okay.
 6 JUDGE BIRO: So let's continue on.
 7 Objection overruled.
 8 MR. FUTERMAN: Thank you, Your Honor.
 9 BY MR. FUTERMAN:
 10 Q So, Ms. Tartaglia, I'll repeat that
 11 question. Out of this \$130,000, when you look at
 12 this \$130,000, do you think to yourself that
 13 Respondent made \$130,000 in profit?
 14 A He did not make \$130,000 in profit.
 15 Q Okay. And is that because out of this
 16 money Respondent has to do things like buy
 17 supplies, pay labor, pay subcontractors, et
 18 cetera?
 19 A Yes.
 20 Q Okay. But what does this information
 21 tell you about Respondent's ability to
 22 pay/continue in business?

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1 and 60?
 2 A Yes.
 3 Q And is this kind of what we were just
 4 talking about where these are funds that would
 5 have come out of that money Respondent made for
 6 the Turnagain property?
 7 A Yes.
 8 Q Thank you, Ms. Tartaglia. So, Ms.
 9 Tartaglia, after reviewing all of that
 10 information: the publicly-available information
 11 reports that you obtained from the library, the
 12 information on Respondent's contract, and the
 13 invoices that Respondent created, were you able
 14 to make a determination about Respondent's
 15 ability to pay/continue in business?
 16 A Yes, I did.
 17 Q And what was that determination?
 18 A I didn't make any adjustments to the
 19 gravity-based penalty amount because the
 20 information that I had on hand was very limited.
 21 Q Okay. But if during this process
 22 Respondent had said to you that this

1 determination was wrong, that this information
 2 was wrong, that it could not pay the penalty,
 3 would you have -- what would you have done in
 4 that circumstance?
 5 A I would ask him for additional
 6 financial information. I --
 7 Q Okay. Would you -- I'm sorry. Go
 8 ahead.
 9 A Yes, go ahead. I'm sorry.
 10 Q Would you ever look at the information
 11 that we just discussed and say, Mr. Von Marees,
 12 whatever information you're about to provide me
 13 doesn't matter. This WestLaw report, this Dun &
 14 Bradstreet report says that you can pay this
 15 penalty and that's the final answer?
 16 A No.
 17 Q No? So if Mr. Von Marees had provided
 18 you more information, would you have considered
 19 that information?
 20 A Yes.
 21 Q Thank you, Ms. Tartaglia.
 22 MR. FUTERMAN: Your Honor, I'm at a

1 as justice may require that warranted an
 2 adjustment in this case?
 3 A There were no other factors.
 4 Q Okay. So yesterday we spoke about a
 5 few kind of sub-factors involved in this
 6 consideration. Did Respondent voluntarily
 7 disclose its violations to you?
 8 A No, he did not.
 9 Q And did Respondent's attitude warrant
 10 any consideration here?
 11 A No.
 12 Q And were there any special
 13 circumstances or extraordinary adjustments that
 14 warranted any consideration here?
 15 A No.
 16 Q So did you modify the gravity-based
 17 penalty due to any other factors as justice may
 18 require?
 19 A I did not.
 20 Q Okay. Thank you, Ms. Tartaglia. So
 21 did you determine after all of that what an
 22 appropriate penalty for Respondent's four

1 natural stopping point and I notice we're on the
 2 hour. I would rather continue, but --
 3 JUDGE BIRO: So, Mr. Von Marees, do
 4 you again need an hour-and-a-half to pick up your
 5 children today?
 6 MR. VON MAREES: They get out at 11:30
 7 today.
 8 JUDGE BIRO: Okay. So you need to
 9 leave now? And can we come back at noon?
 10 MR. VON MAREES: I could leave at
 11 11:30, come back at 1:00. Today is different.
 12 JUDGE BIRO: Okay. So then we'll keep
 13 going.
 14 MR. FUTERMAN: Fantastic. Thank you,
 15 Your Honor.
 16 BY MR. FUTERMAN:
 17 Q So, thank you, Ms. Tartaglia. Okay.
 18 So after reviewing all that information did you
 19 then move on to consider that others factors as
 20 justice may require?
 21 A Yes.
 22 Q Okay. So were there any other factors

1 violations of TSCA and the RRP rule is in this
 2 matter?
 3 A Yes.
 4 Q And what is that penalty amount?
 5 A By adding the 25 percent it came out
 6 to \$25,609.
 7 Q Okay. Thank you, Ms. Tartaglia. And
 8 does CX95, which we admitted into evidence
 9 yesterday; that was the penalty narrative, does
 10 that lay out the exact same process that we just
 11 walked through?
 12 A Yes, it does.
 13 Q Thank you, Ms. Tartaglia. Now are you
 14 aware that Section 16A of TSCA establishes
 15 certain factors that EPA must consider when
 16 calculating a penalty based on violations of
 17 TSCA?
 18 A Yes.
 19 Q And does the RRP penalty policy, CX96
 20 that we just walked through -- does that ensure
 21 that you consider those factors?
 22 A Yes.

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1 Q And how so? How does it do that?

2 A That's because these are the very same
3 factors that were in the penalty policy that I
4 looked at when determining the appropriate
5 gravity-based penalty amount.

6 Q All right. Thank you, Ms. Tartaglia.
7 So before we end I just kind of want to take a
8 step back and take a few minutes to talk about a
9 bit of a broader topic, if that's okay.

10 I'm wondering if based on all of your
11 experience and all of your work with TSCA and the
12 RRP rule if you could speak a little bit about
13 how EPA chose to regulate lead-based paint, the
14 hazards found in --

15 MR. VON MAREES: (Foreign language
16 spoken.)

17 BY MR. FUTERMAN:

18 Q -- lead-based paint and perhaps why.

19 A Sure. So EPA realizes that there are
20 still --

21 MR. VON MAREES: (Foreign language
22 spoken.)

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1 MR. FUTERMAN: You can go ahead, Ms.
2 Tartaglia.

3 JUDGE BIRO: Mr. Von Marees, do you
4 have an objection that you're trying to raise?

5 MR. VON MAREES: No, I'm trying to
6 communicate with the interpreter in Spanish. I'm
7 not able to hear him. I've been asking him for
8 the last three or four minutes that he hears and
9 he doesn't answer me until I went to the English
10 to see what -- if he hears. He hears me in
11 English. I'm going to go to Spanish. I don't
12 think he hears me in Spanish anymore.

13 JUDGE BIRO: Okay.

14 MR. VON MAREES: Yes, I understand him
15 now. I hear him now.

16 JUDGE BIRO: Okay.

17 MR. VON MAREES: It cuts off -- in and
18 out sometimes. That's all it was. Okay.

19 JUDGE BIRO: Let's proceed.

20 BY MR. FUTERMAN:

21 Q Okay. So, Ms. Tartaglia, can you
22 speak a little bit about how EPA has chosen to

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1 regulate lead-based paint and hazards found in
2 lead-based paint and maybe why?

3 A Yes, so EPA realized in -- in 2008
4 that homeowners and contractors were not aware
5 that lead existed in the paint found in homes, in
6 older homes that were built before 1978. Both
7 the homeowners and contractors don't realize the
8 hazards of lead that may impact their health and
9 the environment. My -- my outreach, my
10 involvement in the outreach work that I do allows
11 me to educate the public and make them aware of
12 the RRP rule requirements.

13 When homeowners want to remodel their
14 19 -- their pre-1978 home, I make sure that they
15 -- I inform them to make sure that they hire
16 contractors that are RRP firm certified and
17 renovator certified.

18 Q Okay. So it sounds to me like the EPA
19 Lead-Based Paint Program and -- I guess let me
20 rephrase. It sounds to me like you're saying
21 that the outreach and the certification
22 requirements are somewhat related, there's a

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1 connection there. I wonder would you speak a
2 little bit more about that?

3 A Yes, so my goal again is to make sure
4 the homeowners and contractors are aware of the
5 RRP rule because it is aimed to protect them from
6 the hazards of lead-based paint. And by
7 following the rules it reduce the health risk
8 associated with lead and any lead poisoning for
9 the contractors, the homeowners, their families,
10 especially children under the age of six.

11 Q Okay. Thank you, Ms. Tartaglia. So
12 I guess my follow-on question is then why does
13 EPA take violations of the RRP rule so seriously?

14 A We take it seriously because lead is
15 a -- is toxic, it's dangerous, and any exposure
16 to lead-based paint can cause serious damage to a
17 person's health. Again the RRP rule was created
18 to protect human life, especially young children,
19 from becoming lead poison.

20 Q Thank you, Ms. Tartaglia. So based on
21 all of your years of experience and all your
22 previous work on these sorts of cases do you

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1 believe that \$25,609 is a fair and reasonable
 2 penalty to be assessed against GreenBuild based
 3 on its four violations of TSCA and the RRP rule?
 4 A Yes, I do.
 5 Q And why do you feel that way?
 6 A It's because he was out of the
 7 compliance with the RRP rule. He did not become
 8 firm certified or renovator -- renovator certify.
 9 He was not aware that you had to be -- you needed
 10 to obtain these firm certification and renovator
 11 certification to protect himself, his workers,
 12 the families, his customers and their families
 13 from becoming lead poisoned.
 14 Q Okay. Thank you, Ms. Tartaglia.
 15 MR. FUTERMAN: Your Honor, I have no
 16 further questions at this time.
 17 JUDGE BIRO: Okay. Mr. Von Marees, you
 18 have an opportunity now to ask Ms. Tartaglia some
 19 questions like you did before with Ms. Farnham.
 20 MR. VON MAREES: Perfect. Thank you.
 21 JUDGE BIRO: It has to be a question
 22 --

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1 ask you to please send me the documents, all the
 2 documents that you were going to send in Spanish?
 3 Do you remember me asking you that?
 4 A I don't remember you asking me, but
 5 you may have asked the case team.
 6 MS. MEINHARDT: Ms. Tartaglia, are you
 7 wanting to ask us a question? Oh, okay. Yes.
 8 Oh, we did not -- yes, we did not hear the
 9 interpreter's question. Did you?
 10 INTERPRETER AQUINO: Can you hear me
 11 now?
 12 MS. MEINHARDT: Okay. Yes, Andrew and
 13 I -- Mr. Futerman and I cannot hear the
 14 interpreter's question, Your Honor.
 15 INTERPRETER LOPEZ: I believe the
 16 interpreter cannot be heard. I said the question
 17 --
 18 INTERPRETER AQUINO: Can you hear me
 19 now?
 20 INTERPRETER LOPEZ: Yes.
 21 JUDGE BIRO: Okay. Mr. Futerman, can
 22 you hear the interpreter now?

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1 MR. VON MAREES: Question. Yes.
 2 JUDGE BIRO: -- to provide an answer
 3 and not a statement.
 4 MR. VON MAREES: Yes.
 5 JUDGE BIRO: I'll give you a chance to
 6 testify, but that time is not now.
 7 MR. VON MAREES: Okay.
 8 CROSS-EXAMINATION
 9 BY MR. VON MAREES:
 10 Q (Foreign language spoken.)
 11 A I can't hear. I'm sorry, I can't hear
 12 the question.
 13 JUDGE BIRO: Yes, I can't hear it
 14 either.
 15 THE WITNESS: I can see her mouth
 16 moving, but I can't hear her.
 17 INTERPRETER LOPEZ: I'm going to go
 18 on. Can you hear me?
 19 THE WITNESS: Yes, I can.
 20 JUDGE BIRO: Yes, we can. Thank you.
 21 BY MR. VON MAREES:
 22 Q Ms. Tartaglia, how many times did I

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1 INTERPRETER AQUINO: Can you all hear
 2 me now?
 3 MS. MEINHARDT: Yes, now we can hear
 4 you.
 5 INTERPRETER AQUINO: Okay.
 6 MS. MEINHARDT: Thank you, Your Honor.
 7 INTERPRETER AQUINO: Thank you. I'm
 8 so sorry. I don't know what happened.
 9 JUDGE BIRO: Okay. Could you repeat
 10 the question?
 11 THE WITNESS: Please. Thank you.
 12 JUDGE BIRO: I'll repeat it.
 13 Mr. Von Marees asked did he request
 14 that you send him the EPA documents in Spanish?
 15 THE WITNESS: He did not make the
 16 request with me, but made -- could have made it
 17 with the case team, with my attorneys.
 18 COURT REPORTER: Excuse me. Excuse
 19 me. This is the Court Reporter. Excuse me,
 20 everyone.
 21 JUDGE BIRO: Yes.
 22 COURT REPORTER: There is interference

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1 that is causing -- somebody's not on the right
 2 channel. Somebody's changed their channel
 3 setting. It's now incorrect. So could we go off
 4 the record please?
 5 JUDGE BIRO: Yes, we can go off the
 6 record for a few minutes.
 7 COURT REPORTER: Thank you, Your
 8 Honor.
 9 (Whereupon, the above-entitled matter
 10 went off the record at 3:11 p.m. and resumed at
 11 3:15 p.m.)
 12 JUDGE BIRO: Okay. Let's proceed.
 13 BY MR. VON MAREES:
 14 Q My question again. How many times did
 15 I request the documents from Ms. Maria in
 16 Spanish? Many times when I have a conversation I
 17 understands English, but it's very difficult for
 18 me to read it.
 19 (Pause.)
 20 INTERPRETER AQUINO: Okay.
 21 (Pause.)
 22 INTERPRETER AQUINO: Okay. I'm sorry.

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1 JUDGE BIRO: Yes, why don't we just
 2 break? You can try to fix this now. And then
 3 Mr. -- and we'll come back in an hour and 45
 4 minutes.
 5 (Whereupon, the above-entitled matter
 6 went off the record at 3:16 p.m. and resumed at
 7 5:01 p.m.)
 8 JUDGE BIRO: And, Mr. Von Marees, you
 9 were asking questions of the witness.
 10 MR. VON MAREES: Yes.
 11 JUDGE BIRO: Do you have additional
 12 questions you'd like to ask Ms. Tartaglia?
 13 MR. VON MAREES: Yes. I never heard
 14 her response.
 15 JUDGE BIRO: Okay.
 16 THE WITNESS: Could you repeat the
 17 question again?
 18 JUDGE BIRO: Yes.
 19 MR. VON MAREES: How many times did I
 20 request from you guys to send me all this
 21 communication that you guys wanted to have with
 22 me in Spanish?

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1 I'm sorry. Okay.
 2 BY MR. VON MAREES:
 3 Q How many times have I asked Ms. Maria
 4 for the documents in Spanish?
 5 MS. MEINHARDT: Your Honor,
 6 Complainant cannot hear interpreter right now.
 7 JUDGE BIRO: Okay. I think you --
 8 MR. VON MAREES: Can we switch to the
 9 other interpreter?
 10 JUDGE BIRO: Can neither you or Mr.
 11 Futerman hear the -- Ms. Aquino?
 12 INTERPRETER AQUINO: Can you hear me?
 13 MS. MEINHARDT: Your Honor, yes.
 14 INTERPRETER AQUINO: I am on the
 15 English channel. You guys cannot hear me?
 16 MS. MEINHARDT: I can try switching my
 17 options if the court reporter or the IT help,
 18 with the court reporter, could assist until
 19 (audio interference).
 20 JUDGE BIRO: Okay. I mean --
 21 INTERPRETER AQUINO: I'm sorry. Can
 22 --

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1 THE WITNESS: I don't recall you
 2 asking me that question, so I was not aware that
 3 you wanted it in Spanish.
 4 MR. VON MAREES: I have another
 5 question.
 6 JUDGE BIRO: Please proceed with all
 7 your questions.
 8 BY MR. VON MAREES:
 9 Q Okay. So how do you calculate the
 10 amount that you charge if there was a lead test
 11 done which was negative?
 12 Why are you counting other things with
 13 a negative test of lead?
 14 A So --
 15 Q What are the calculations?
 16 A So, I use the penalty policy. It's
 17 already predetermined, the penalty amount, for
 18 the violations that I found against your company,
 19 GreenBuild.
 20 Q I understand. Okay, so why did you
 21 not take under consideration that I did the test
 22 before I worked at the premises. And I sent you

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1 a copy of the test. And you're mentioning it on
 2 the paper, CX105. Why did you not consider that
 3 I took a test before starting to work on the
 4 property?
 5 A So, are you referring to the lead
 6 check test?
 7 Q Yes.
 8 A Okay. Based on the information that
 9 I had in the case file, when you took the lead
 10 check test you were not certified, you were not a
 11 certified renovator at the time. So those
 12 results were not valid.
 13 Q Okay. Why is that test not valid if
 14 it's the same test that the town of Anchorage and
 15 the municipal are requesting?
 16 If it is the same kind of test, why is
 17 that test not valid?
 18 A Again, you have to be a certified
 19 renovator to conduct a test.
 20 Q The problem is that you guys never
 21 sent me what I requested in Spanish. Do you
 22 remember that, that I told you several times?

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1 JUDGE BIRO: Right. I'm a little
 2 confused about that. Does the economic benefit
 3 have to reach a certain amount before you
 4 consider that there is economic benefit?
 5 THE WITNESS: Yes. It has to be more
 6 than the maximum penalty amount for each
 7 violation.
 8 JUDGE BIRO: The economic benefit has
 9 to be more than the maximum penalty amount?
 10 THE WITNESS: That is correct. That's
 11 according to the penalty policy.
 12 JUDGE BIRO: So, if the maximum
 13 penalty amount was \$6,000, before you would
 14 consider if there was an economic benefit, the
 15 respondent has to have benefitted by at least
 16 \$6,000?
 17 THE WITNESS: Yes.
 18 JUDGE BIRO: Okay. Can you tell me
 19 how long these firm certification and renovator
 20 certification training programs last? What do
 21 they involve?
 22 THE WITNESS: Yes. So to become firm

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1 A You did not tell me, but maybe to the
 2 case team.
 3 MR. VON MAREES: Those would be my
 4 questions up to the moment.
 5 JUDGE BIRO: Okay. So, Mr. Futerman,
 6 do you have any redirect?
 7 MR. FUTERMAN: No, Your Honor. No
 8 redirect.
 9 JUDGE BIRO: Okay. I have just a few
 10 questions, if I may, Ms. Tartaglia.
 11 THE WITNESS: Yes, Your Honor.
 12 JUDGE BIRO: Have you imposed other
 13 penalties on developers, real estate renovators,
 14 in Alaska?
 15 THE WITNESS: Yes, we have.
 16 JUDGE BIRO: And how about in
 17 developers or flippers in Anchorage? Renovators
 18 in Anchorage?
 19 THE WITNESS: To my knowledge, yes.
 20 JUDGE BIRO: Okay. You indicated that
 21 you assign no economic benefit to the violations.
 22 THE WITNESS: That is correct.

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1 certified you simply have to apply online through
 2 the EPA website. You pay \$300. And that lasts
 3 for five years.
 4 For the renovator certification you
 5 need to locate a certified training provider,
 6 take an eight hour initial renovator class. And
 7 the fee for that is anywhere from \$250 to \$300
 8 per class. And the certification will last you
 9 for five years.
 10 JUDGE BIRO: Do you know if this class
 11 is given in Anchorage?
 12 THE WITNESS: I believe there is one
 13 training provider out in Anchorage.
 14 JUDGE BIRO: You indicated that Mr.
 15 Von Marees pulled a permit for a renovation
 16 before he had his firm certification. And that
 17 would be a violation.
 18 THE WITNESS: Yes.
 19 JUDGE BIRO: How would he know not to
 20 pull a permit before he had his certification,
 21 without taking the certification classes first?
 22 THE WITNESS: Well, when we made an

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1 initial contact with him back in 2015, 2017 and
2 then 2018, we spoke to him each time and talked
3 about the RRP rule requirements. We emphasized
4 to him that before he can pull a permit on a pre-
5 1978 home he needed these two certifications to
6 be in compliance with the RRP rule.

7 So at the time when I spoke with him,
8 he understood what I said. Because he spoke to
9 me in English.

10 JUDGE BIRO: So this was -- you were
11 clear that he needed it even to pull the permits,
12 regardless of whether he was doing the renovation
13 or before the renovation, he needed it just to
14 pull a permit?

15 THE WITNESS: Well, so, the rule says,
16 even before you can perform or offer to perform,
17 you must be firm certified to do any kind of
18 renovation work. So that means, when he pulled
19 the permit he should have been firm certified.

20 JUDGE BIRO: Okay. I don't think I
21 have any further questions.

22 Mr. Futerman, did my questions raise

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1 any questions for you?

2 MR. FUTERMAN: Just one more question,
3 Your Honor.

4 JUDGE BIRO: Okay.

5 MR. FUTERMAN: Thank you.

6 REDIRECT EXAMINATION

7 MR. FUTERMAN: Ms. Tartaglia, when you
8 had the telephone conversation with Mr. Von
9 Marees, do you remember specifically telling him
10 that before he can obtain a permit, before he can
11 pull a permit, he has to be EPA firm certified?

12 THE WITNESS: Yes.

13 MR. FUTERMAN: No further questions,
14 Your Honor.

15 JUDGE BIRO: Mr. Von Marees, did my
16 questions raise any questions you'd like to
17 follow-up on?

18 MR. VON MAREES: Yes.

19 RECROSS EXAMINATION

20 BY MR. VON MAREES:

21 Q Do you have any evidence that you gave
22 me that information, because until today I do not

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1 remember any of that?

2 A We do have a certified receipt showing
3 that you accepted all the letters that we sent
4 you. Especially the one I sent you.

5 I sent that certified mail. So I have
6 a green card showing that you received my
7 information.

8 Q But does that information show and
9 indicate that you cannot take out a permit?

10 A In the letter it states that before
11 you can offer or perform any work on a pre-1978
12 home, that means before you can actually pull a
13 permit from a building permit, you need to be
14 firm certified.

15 Q Did you send that letter in Spanish?

16 A No. Not at that time.

17 MR. VON MAREES: That would be all.

18 JUDGE BIRO: Okay. Thank you, Ms.
19 Tartaglia.

20 Do you wish to retain the rights to be
21 called on, Ms. Tartaglia?

22 INTERPRETER AQUINO: I'm sorry,

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1 Counsel, can you repeat yourself?

2 JUDGE BIRO: Mr. Futerman, do you wish
3 to retain the right to recall Ms. Tartaglia?

4 MR. FUTERMAN: Yes. Please, Your
5 Honor.

6 JUDGE BIRO: Okay. Thank you very
7 much. You remain tied to this case so please
8 remain available.

9 THE WITNESS: Okay.

10 JUDGE BIRO: Ms. Meinhardt, Mr.
11 Futerman, do you want to call your next witness?

12 MR. FUTERMAN: Your Honor, if we could
13 reserve the right to recall, excuse me, we could
14 reserve the right to recall a witness on rebuttal
15 if necessary. Other than that, Complainant
16 rests.

17 JUDGE BIRO: Okay. Before you rest,
18 let me go over the exhibits you have admitted to
19 make sure that you admitted all of the exhibits
20 you wanted to.

21 MR. FUTERMAN: Okay. Can I just
22 instruct Ms. Tartaglia? Socky, you can leave.

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1 You're done.
 2 MS. TARTAGLIA: Okay.
 3 MR. FUTERMAN: Thank you.
 4 MS. TARTAGLIA: Thank you. Thank you,
 5 Your Honor.
 6 JUDGE BIRO: You're welcome. I have
 7 that you have offered, and has been admitted into
 8 the record in your case in chief, Complainant's
 9 Exhibit 1, 3, 4A, 6, 7, 8, 9, 10, 11, 12, 15
 10 through 55, 59, 60, 76 through 78, 80 through 83,
 11 85 through 89, 94 through 98, 100 and 101. And
 12 that's it.
 13 MR. FUTERMAN: Yes. Yes, Your Honor.
 14 JUDGE BIRO: Okay.
 15 MR. FUTERMAN: We have the same list,
 16 and we agree.
 17 JUDGE BIRO: Okay, great. Mr. Von
 18 Marees.
 19 MR. VON MAREES: Yes.
 20 JUDGE BIRO: This is your chance now
 21 to testify. I'm going to put you under oath.
 22 MR. VON MAREES: Okay.

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1 home address?
 2 MR. VON MAREES: 11221 Olive Lane,
 3 Anchorage, Alaska.
 4 JUDGE BIRO: And what is your
 5 relationship to the Respondent company?
 6 INTERPRETER AQUINO: Okay, Judge, I
 7 know you understand and let me repeat everything
 8 he just said.
 9 JUDGE BIRO: Okay. Yes.
 10 INTERPRETER AQUINO: This is a --
 11 JUDGE BIRO: Sorry.
 12 INTERPRETER AQUINO: Yes.
 13 DIRECT EXAMINATION
 14 MR. VON MAREES: Okay, my full name is
 15 Rodrigo Andres Von Marees. The Office Address is
 16 11221 Olive Lane, Anchorage, Alaska. And I am
 17 the owner, together with my wife, of the company.
 18 JUDGE BIRO: All right. Mr. Von
 19 Marees, tell me everything you want me to know.
 20 MR. VON MAREES: Okay. First of all,
 21 I am going to tell you, as owner of the company,
 22 every day I receive millions of calls -- not

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1 JUDGE BIRO: The court reporter will.
 2 And then I want you to tell me, in the way you're
 3 more comfortable, everything you want me to know.
 4 MR. VON MAREES: Perfect.
 5 JUDGE BIRO: Okay. Take your time.
 6 In whatever order, I want to know everything.
 7 So, Mr. Reporter, can you please swear in Mr. Von
 8 Marees?
 9 WHEREUPON,
 10 RODRIGO VON MAREES
 11 was called as a witness for the Respondent and,
 12 having been first duly sworn, was examined and
 13 testified as follows:
 14 JUDGE BIRO: And you can refer to the
 15 documents, Mr. Von Marees, if you want. Just
 16 tell us what number document you're referring to.
 17 MR. VON MAREES: Okay.
 18 JUDGE BIRO: Okay, so before we begin,
 19 give me your full legal name.
 20 MR. VON MAREES: Rodrigo Andres Von
 21 Marees.
 22 JUDGE BIRO: And please tell me your

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1 millions, I receive every day many calls. Okay.
 2 A lot of calls.
 3 Of people that offer me services. For
 4 examples, trainings. Many of those trainings I
 5 do not understand them.
 6 So then when, many times I arrive home
 7 and I speak to my wife, I tell her and I speak to
 8 her about these phone calls and the offers that
 9 they're offering me.
 10 But in the case of EPA, it's something
 11 different. In the case of these offers that EPA
 12 contact me to offer me, and these trainings, I
 13 spoke to my wife about it and she said, no, these
 14 are other things that they're trying to just sell
 15 to you. They're just trying to sell something
 16 else to you. So many times they try to sell me a
 17 lot of different types of trainings and courses.
 18 So what happened with EPA, they called
 19 me several times, and several times I told them
 20 to send me the information and the documents in
 21 Spanish, because that's my language, in order for
 22 me to be able to understand what they were trying

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1 to offer and say.

2 And then one day they called me and
3 they tell me, let's meet at a hotel. So when I,
4 as a person, I try to keep my business. I have
5 never know before who was EPA until now.

6 They tell me one day that I have to go
7 to a hotel to meet several people. And I found
8 that very awkward and strange because right now,
9 nowadays, there is a lot of scams. And in my
10 opinion I just thought that was very weird and
11 awkward. In my opinion.

12 So then one day I started this job
13 that Mr. Jason Warfield offered me. Telling me
14 that he had a lot of properties throughout the
15 year and that he wanted to make business with me
16 so that I can renew them for him. Renovate them
17 for him.

18 Before at the time that I started
19 working for Mr. Warfield, I had not done
20 basically any or almost none, no renovations in
21 antique living spaces. Before I started working
22 for Mr. Warfield.

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1 certification. I asked him what it as. And to
2 this day I still remember the gentleman replied
3 to me, I have no idea.

4 So I practically just continued
5 working at the property in Turnagain. And I told
6 all of this to Agent Kim at that time.

7 So then Agent Kim told me, look,
8 Rodrigo, you're going to take out your
9 certification. Once you get your certification
10 you're going to send it to me. And together with
11 all the subcontractors that have worked at this
12 job. Their emails, phone numbers and addresses.

13 I did exactly to the point. I sent
14 her the letter of all the subcontractors,
15 together with my certification. Certifications
16 which I had to pay two bills for. The first one
17 was to certify GreenBuild for \$800. And \$600 to
18 certify myself. So we're speaking about \$1,400.

19 That's really a lot of money. I spent
20 a week in training. Where I learned a lot.
21 About EPA, about lead. That I have never in my
22 life heard any of that information that I learned

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1 So then when I started the project of
2 Mr. Warfield, in Turnagain, the Agent Kim arrived
3 with another gentleman. And Agent Kim and the
4 other Agent started identified themselves with
5 me. And we started speaking about what EPA is
6 and what it's based about. What does it do.

7 So then Ms. Kim and I started
8 speaking. She was a very nice lady. Very
9 friendly. And then there we started speaking
10 about all the times that they had tried to
11 contact me and reach out to me.

12 And I said, unfortunately -- and I
13 told her unfortunately I did not believe that you
14 guys were a government office. Because the
15 municipality of Anchorage in Alaska, they never
16 told me anything about EPA and their
17 certifications. And certificates.

18 Even one time when I went in to take
19 the permit for Turnagain I personally asked the
20 gentleman in front of the lobby, I asked the
21 gentleman in the front desk that works for the
22 municipality of Anchorage, what is a EPA

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1 doing that.

2 After I was speaking to Agent Kim, the
3 other gentleman, the other agent, whom was taking
4 pictures all around the house, he came towards
5 us. We spoke a few words and then they said
6 goodbye and they left.

7 Agent Kim never walked around the
8 house, she was right next to me the whole time in
9 front of my pickup truck. Which the picture is
10 in --

11 INTERPRETER AQUINO: He's looking for
12 the picture to tell us where it is. I told him
13 to take his time to look for that picture.

14 JUDGE BIRO: Tell him to take whatever
15 time he needs.

16 MR. VON MAREES: Thank you.

17 COURT REPORTER: That's going to be
18 Exhibit 17 if I'm not mistaken.

19 MR. VON MAREES: The Exhibit Tab is
20 CX24. Do you see that picture?

21 JUDGE BIRO: The court reporter is
22 going to pull it up for us.

1 MR. VON MAREES: I'm sorry, it's CX21.
 2 Correction, CX21.
 3 So the picture is CX21. You can see
 4 the front of my pickup truck. And in the picture
 5 CX18, you can see the rear part of the pickup
 6 truck.
 7 Which shows that my pickup truck is
 8 very separated from the area of construction.
 9 That's why I want to point out to you that Agent
 10 Kim was always next to me. Next to my pickup
 11 truck. We were speaking. She was always by my
 12 side.
 13 So when yesterday, when she confirmed
 14 that all this paint outside, in the floor of the
 15 house, she even confirmed saying that there were
 16 pictures from the rear part, the back part of the
 17 house, when she never moved away from me. She
 18 was right next to me speaking until we finished
 19 the conversation and then they left.
 20 So that tells me that here there is a
 21 lot of wrong information. Like also the date
 22 that Agent Kim was speaking to me.

1 kept calling me and telling me that I was guilty,
 2 Your Honor, I am the one that works, I am the one
 3 that moves the hammer. The one that is on my
 4 knees installing floors, with one helper. I am a
 5 small company.
 6 And I am trying to grow. And I have
 7 this lady that calls me constantly, how do you
 8 say it, she is calling me, threatening me. She
 9 keeps calling me to tell me that I am guilty and
 10 that I broke the law and that I have to pay.
 11 One day I told her, can you please
 12 stop calling me because I cannot resist your
 13 phone calls and your threats anymore. After that
 14 call they changed the attorney of EPA. And then
 15 Mr. Futerman started contacting me.
 16 And again, I explained to him what
 17 happened and my conversation with Agent Kim. And
 18 again, he would repeat to me, you broke the law,
 19 you're responsible, you have to pay.
 20 I told them while I want to speak to
 21 the judge myself. I want to explain my
 22 situation. He gave me an option for us to make

1 And when she told me that if I send
 2 her the certification and all the names of the
 3 subcontractors, we're going to name this a
 4 warning for you. And then what I told her is,
 5 perfect Agent Kim. I'm going to send you all
 6 this information and everything is going to be
 7 kept like the book says, in order.
 8 My company does not have any previous
 9 bad records. Nothing with anyone. So then I do
 10 not understand why a year later the attorney,
 11 Meinhardt, from EPA, contacts me. The attorney
 12 from EPA contacts me and she tells me that I am
 13 responsible for all these violations.
 14 She constantly told me, Mr. Von
 15 Marees, you broke the laws and you have to pay.
 16 She constantly kept repeating it.
 17 And I simply -- and I told her when I
 18 spoke to Agent Kim and everything myself and
 19 Agent Kim spoke about. And I told her that Agent
 20 Kim said that this was just going to be a warning
 21 for me.
 22 And then after so many times that she

1 an agreement in between us in regards to the fine
 2 that he wanted to charge me. The penalty.
 3 JUDGE BIRO: Let me stop you. Don't
 4 tell me about your settlement negotiations.
 5 INTERPRETER AQUINO: Okay.
 6 MR. VON MAREES: (Speaking for
 7 himself.) No, no, no.
 8 INTERPRETER AQUINO: (Foreign language
 9 spoken.)
 10 JUDGE BIRO: Okay. That's considered
 11 confidential information --
 12 INTERPRETER AQUINO: (Foreign language
 13 spoken.)
 14 JUDGE BIRO: -- between you and the
 15 Agency.
 16 INTERPRETER AQUINO: (Foreign language
 17 spoken.)
 18 MR. VON MAREES: (Speaking for
 19 himself.) Okay.
 20 JUDGE BIRO: So I don't what to know
 21 what you offered or the Agency offered and what's
 22 --

1 INTERPRETER AQUINO: (Foreign language
 2 spoken.)
 3 MR. VON MAREES: Yes, I don't want to
 4 tell you that. I'm just telling you what the
 5 Attorney told me.
 6 JUDGE BIRO: Okay.
 7 MR. VON MAREES: Only that happened.
 8 I am only telling you my story so that you can
 9 know.
 10 JUDGE BIRO: And I know want to know,
 11 except for that detail.
 12 MR. VON MAREES: I'm not going to tell
 13 you the numbers. After the day, several
 14 conversations -- after that day of that
 15 conversation I send them a year's worth of my
 16 taxes. After that days conversation.
 17 But I told him, at that moment, I have
 18 been sick. They just removed some tumors from my
 19 arm and my stomach. And unfortunately I had to
 20 let my helper go.
 21 And I have been speaking to several
 22 friends to see if I can find something else to do

1 COURT REPORTER: Pardon me, please
 2 repeat the answer consecutively.
 3 MR. VON MAREES: -- lead and asbestos
 4 test.
 5 INTERPRETER LOPEZ: I am going to ask
 6 him to repeat, sir.
 7 MR. VON MAREES: The municipality in
 8 the State of Alaska wants all contractors to have
 9 licenses in asbestos and lead. Which is one of
 10 the trainings that I did previously when EPA
 11 contacted me.
 12 And then I told them, I told EPA that
 13 that was the certification I had at the moment.
 14 And EPA told me that it wasn't valid.
 15 Like Ms. Maria said previously, she
 16 said if a company has no record, we need to
 17 essentially give them a warning. In my case, I
 18 wasn't given anything.
 19 And they went directly to a fine
 20 jeopardizing me. And at this moment my
 21 construction company is practically not
 22 generating any money.

1 because I am the one who supports my house. My
 2 wife does not work.
 3 And due to the pandemic also,
 4 practically I have not been able to work like I
 5 would want to. And in December of last year,
 6 having four surgeries, practically with no source
 7 of income, and I can say there is a small light
 8 opening that I can start doing yard work
 9 supervising Mexican friends.
 10 That's my story. And everything I
 11 have told you is just the truth and nothing but
 12 the truth.
 13 JUDGE BIRO: Is there anything about
 14 the documents, which we admitted quite a number,
 15 that you want to tell me about them that you
 16 haven't told me before?
 17 INTERPRETER AQUINO: We're switching
 18 guys. Okay, go ahead.
 19 MR. VON MAREES: There is a test that
 20 I have done at the municipality of Anchorage that
 21 makes, the municipality that makes us contractors
 22 --

1 MR. FUTERMAN: Objection, Your Honor.
 2 It's contrary to the motion in limine.
 3 JUDGE BIRO: It's okay.
 4 MR. VON MAREES: I'm just telling my
 5 story here.
 6 JUDGE BIRO: Okay.
 7 MR. VON MAREES: Then on the day that
 8 I made the contract with Mr. Warfield, personally
 9 I took four lead tests with the intention that if
 10 the house came back with any positive tests of
 11 lead the contract was going to be much higher.
 12 Because the preparation that the EPA asks for,
 13 and the certifications that I did before the
 14 municipality of Alaska, they're the exactly the
 15 same as the EPA is asking for.
 16 The preparations that one has to do
 17 when you encounter a positive test is the same.
 18 It's even more complicated when it's only lead.
 19 We're talking about lead and asbestos here.
 20 What I'm trying to tell you, Your
 21 Honor, here, and I would like you to understand
 22 my position. When I do, when one does everything

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1 that they ask them to do and try to be, do
 2 everything the right away, all the tests and
 3 everything, all these regulations exists, and I'm
 4 trying to, I tried to ask my wife, Carrie,
 5 because many times she helps me with clients,
 6 writing letters, emails, suppliers.
 7 I would love my wife to be here
 8 present to let you guys know properly what we've
 9 gone through. What my wife and I have gone
 10 through with the EPA. With all the letters
 11 they've been doing, they've been sending. All
 12 the calls they've been making. All the threats.
 13 Your Honor, I don't know and I don't
 14 understand why they spent so much money, so much
 15 time, so much money with a small person like me.
 16 Why are they trying to attack me, why are they
 17 trying to ruin me after doing exactly, to the
 18 letter, what the Agent Kim had told me to do. I
 19 did everything she said.
 20 Can I ask a question to -- I'd like to
 21 ask a question to Ms. Meinhardt.
 22 JUDGE BIRO: No.

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1 MR. VON MAREES: Then let me tell you
 2 about the Turnagain property.
 3 When I arrived and took on that job,
 4 at the Turnagain property, I noticed that there
 5 had been previous work done already on that
 6 property before we even started. Many parts of
 7 the home were already demolished.
 8 When I took that property I told the
 9 owner, I'm going to make some tests. I don't
 10 want to jeopardize any of my workers, especially
 11 with lead. I was very aware of the fact that --
 12 MR. VON MAREES: (Speaking for
 13 himself.) No, asbestos.
 14 INTERPRETER LOPEZ: Asbestos.
 15 MR. VON MAREES: More asbestos than
 16 lead. Yes.
 17 Than I did four tests on that
 18 property. Unfortunately, in these documents were
 19 sent to me, that looks like a Bible, I don't see
 20 any of the tests that I showed, I told Mr.
 21 Futerman about.
 22 I sent it to the court as evidence.

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1 MR. VON MAREES: No?
 2 JUDGE BIRO: No.
 3 MR. VON MAREES: How many times, I
 4 just want to say, how many times that she called
 5 me and asked me questions about Agent Kim. And
 6 she never understood what I was trying to say to
 7 her.
 8 This is why I tell you, Your Honor,
 9 your time, your time, the lawyer's time, all the
 10 time and money that is being spent here. I don't
 11 understand why. Why you after me. This whole
 12 process, after me.
 13 After I did everything that was told
 14 by them for me to do. That would be my
 15 statement.
 16 JUDGE BIRO: Okay. Is there anything
 17 else that you want me to know about the
 18 documents, about the work that you did on the
 19 Turnagain property, about your licensing,
 20 anything?
 21 I want to make sure you have told me
 22 absolutely everything you want me to know.

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1 And it doesn't show up in any of these documents.
 2 And that test was negative. And that test is an
 3 official test that's used for residential
 4 properties and commercial properties.
 5 Commercial.
 6 And when I started doing it this
 7 gentleman said that he was going to hire me for
 8 other properties. Unaware to me that those
 9 properties, a lot of those properties, were built
 10 pre-1978.
 11 And all this I learned from talking to
 12 Agent Kim when I asked her to send me all the
 13 information for the certifications. No one else
 14 sent it to me but her.
 15 I was able to do the training and take
 16 the tests for certifications of lead. Which put
 17 me on a different parameter. On a different
 18 level to be able to do something later on in the
 19 future.
 20 JUDGE BIRO: Okay. Is there anything
 21 else you want to tell me, Mr. Von Marees?
 22 MR. VON MAREES: Well, this is my

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1 story. That is it.
 2 JUDGE BIRO: Okay. Let me just
 3 clarify a couple of points with you because I
 4 didn't really understand.
 5 Did you say that you were certified by
 6 the State of Alaska as a lead renovator?
 7 (Simultaneous speaking.)
 8 JUDGE BIRO: -- properties?
 9 MR. VON MAREES: The state
 10 municipality -- the State of Alaska and the
 11 municipality of Anchorage wants you to be
 12 certified. And you show you how to do the tests
 13 and how to get rid of waste.
 14 JUDGE BIRO: Okay.
 15 MR. VON MAREES: That waste can't be
 16 thrown out in any part. I have to call the
 17 landfill, ask for a specific time and be there at
 18 the specific time to get rid of any waste.
 19 Whether it be asbestos or lead.
 20 There are agents in the landfill that
 21 are there and they are looking to see if you
 22 throw out a piece of drywall and they see it, and

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1 is able to do it. When she went to do the
 2 training, it was full of men there but she did
 3 the training and she passed it.
 4 JUDGE BIRO: So this was the State of
 5 Alaska or the municipality of Anchorage?
 6 MR. VON MAREES: Municipality
 7 recognized by the state. That's the only
 8 certification that I knew of, as a general
 9 contractor, that I needed to be in operation.
 10 (Simultaneous speaking.)
 11 JUDGE BIRO: Specifically related to
 12 lead paint and lead paint renovations?
 13 MR. VON MAREES: Lead and asbestos.
 14 Both. And I even mentioned that to Agent Kim.
 15 She says no, no, Rodrigo, no, you need another
 16 certification. And that certification is a
 17 federal one.
 18 Then I told her, perfect, perfect, my
 19 apologies. I wasn't aware of that. And I asked
 20 her, please, give me all the information that I
 21 need. And I complied to the letter.
 22 JUDGE BIRO: When you did the lead

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1 they see -- and if they make a test of that piece
 2 of drywall and it comes out positive for lead or
 3 asbestos, you get a fine for \$3,500. \$35,000
 4 actually.
 5 JUDGE BIRO: That was not my question.
 6 Listen carefully to my question. When you did
 7 the work on the Turnagain property, did you have
 8 a state of Alaska lead renovator certificate?
 9 MR. VON MAREES: Yes.
 10 JUDGE BIRO: Or municipality
 11 certificate?
 12 MR. VON MAREES: Yes.
 13 JUDGE BIRO: Okay. What was your
 14 number for this state or do you have it with you?
 15 What is your number? Certification number?
 16 MR. VON MAREES: My wife has it in her
 17 file. She is the one that did the training. She
 18 is certified GreenBuild Company.
 19 JUDGE BIRO: Okay.
 20 MR. VON MAREES: One person can do the
 21 training for the company. She is part of the
 22 company. She is my partner in the company, she

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1 tests at the Turnagain property, who trained you
 2 to do those tests?
 3 MR. VON MAREES: That was showed at
 4 the course that my wife went to.
 5 JUDGE BIRO: So your wife taught you
 6 how to do it?
 7 MR. VON MAREES: It's a very simple
 8 test. It's a bottle with a sponge where you
 9 break it and you put the piece of paint, or
 10 sample of paint, inside and that's it. It's very
 11 simple.
 12 The sponge wets the paint and then
 13 there is a little card which gives you the
 14 results. Very, very easy.
 15 It's the same test EPA uses. And when
 16 they showed me it was here in the -- it's the
 17 same test that they focused on here in one of the
 18 pages of evidence.
 19 JUDGE BIRO: Is that Complainant
 20 Exhibit 103?
 21 MR. VON MAREES: Let me see one second
 22 please. Yes. Yes. Yes, that's it. That's it.

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1 (Whereupon, the above-referred to
2 document was marked as Complainant Exhibit No.
3 103 for identification.)

4 MR. VON MAREES: CX105. 105. That's
5 exactly the same. It's upside down. That could
6 be bought in Home Depots, Lowes. Home Depot.

7 JUDGE BIRO: So, can you tell me how
8 Mr. Warfield came to pick you to do his
9 renovations on these houses?

10 MR. VON MAREES: Personally, I'm a
11 very good worker. I do a lot of good work. I'm
12 a very detailed person.

13 My title is mechanical engineer. And
14 being that, I'm very meticulous. When Mr.
15 Warfield saw one of the jobs that I did onto one
16 of his friends, he came over to me and he offered
17 me something marvelous. Saying that we're going
18 to earn thousands and thousands of dollars. He
19 turned out being not a good guy.

20 JUDGE BIRO: Did he ask you if you had
21 any certifications?

22 MR. VON MAREES: Him and his wife

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1 Carmella. Carmella was the one that, is the one
2 that asked for all the certifications and
3 everything before any work is done.

4 I have never worked with anyone that
5 ever gave me a contract this thick in order to
6 work with them. This thick.

7 She looked through my whole profile.
8 It was an impeccable profile. She looked through
9 everything that my company had.

10 She is the one that does the designs
11 of the house. And many of my ideas, they loved
12 my ideas, they loved my designs. The way I
13 worked.

14 And we started working.
15 Unfortunately, the Turnagain house I didn't earn
16 much. Than the Tahoe project, the one that's in
17 the folder here, I lost close to \$50,000. And
18 that's the last job I did with Mr. Warfield.

19 JUDGE BIRO: So, you said you signed
20 a large contract with Mr. Warfield?

21 MR. VON MAREES: Yes.

22 JUDGE BIRO: Was the contract in

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1 Spanish?

2 MR. VON MAREES: I'll tell you one
3 thing, I never even read it. I swear to you. I
4 never read it.

5 Working with residential clients, I
6 never had a problem with anyone. And when I saw
7 a contract like that, like I said, these must be
8 regulations, I have no idea. I confided in you,
9 I have confidence in you, I'll sign it.

10 This man's record, he used to be a car
11 salesman. He's a very good seller obviously. He
12 lied to me. He told me so many incredible,
13 marvelous things that was going to happen.

14 And after all this I windup now having
15 problems with EPA. How is that?

16 JUDGE BIRO: So was this contract in
17 English or Spanish?

18 MR. VON MAREES: Everything was in
19 English. I didn't read it.

20 JUDGE BIRO: In this case with EPA you
21 have been representing the company and filing
22 documents in English. Who has been writing those

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1 documents for you?

2 MR. VON MAREES: My wife.

3 JUDGE BIRO: Is she a lawyer?

4 MR. VON MAREES: No.

5 JUDGE BIRO: Is she a paralegal?

6 MR. VON MAREES: She's the mother of
7 my three children.

8 INTERPRETER LOPEZ: Ms. Aquino is
9 taking over.

10 MR. VON MAREES: She is the mother of
11 my three wonderful children.

12 INTERPRETER AQUINO: Can you guys hear
13 me?

14 JUDGE BIRO: Yes, I can, Ms. Aquino.
15 Thank you.

16 INTERPRETER LOPEZ: Okay.

17 JUDGE BIRO: So, is she a paralegal or
18 a legal secretary?

19 MR. VON MAREES: No. No. She is a
20 very smart woman that went to MIT. And today she
21 is the mother of my children. She is the one
22 that takes care of my children. She is very

1 intelligent. And I am the one that has to go out
 2 to work.
 3 JUDGE BIRO: So what did your wife get
 4 her degree in at MIT?
 5 MR. VON MAREES: Something with
 6 aerospace. Her classmates are astronauts.
 7 JUDGE BIRO: Who was at the Turnagain
 8 property with you? You said us in response to
 9 some of the questions that Ms. Kim came over to
 10 speak to us.
 11 MR. VON MAREES: My helper was next to
 12 us.
 13 JUDGE BIRO: And what's his name?
 14 MR. VON MAREES: Paul Maple.
 15 JUDGE BIRO: Does Mr. Maple speak
 16 English?
 17 MR. VON MAREES: Yes. He's native
 18 from Alaska. Yes.
 19 JUDGE BIRO: Can you tell me how you
 20 picked the name GreenBuild for your company?
 21 MR. VON MAREES: The name GreenBuild
 22 I picked it to make construction efficient. To

1 make it green. High efficiency boilers, solar
 2 panels. Everything that is equivalent to
 3 renewable energy. Recyclable materials.
 4 What happened, the thing is that it's
 5 not to the max in Alaska. High demand. There is
 6 not such high demand in Alaska.
 7 Because of the problem of the shipping
 8 was so far, that everything is very bright.
 9 Clear. Very expensive.
 10 JUDGE BIRO: Yes.
 11 MR. VON MAREES: So after the
 12 GreenBuild I continued with what it is,
 13 construction. But it came to a point where a lot
 14 of people would ask me, what is GreenBuild.
 15 And then they would ask me if I would
 16 perform landscape. And I would say, no, no
 17 landscape.
 18 Until one day a Mexican friend, which
 19 he does landscaping, he asked me if I wanted for
 20 him and I to do some business together. He
 21 wanted me to help him to speaking to the customer
 22 in terms of invoices and estimates.

1 And he would do -- and he said that he
 2 would do the hard work due to my medical
 3 conditions. I had two surgeries and I have
 4 problems in my back.
 5 And then even because of that reason,
 6 they put it, and I just noticed, which is CX111.
 7 I have created GreenBuild, and this is the reason
 8 why I still have my uniform with GreenBuild as a
 9 contractor.
 10 GreenBuild Construction, old uniform.
 11 So now I am looking for jobs to be able to
 12 continue growing. So I like the name GreenBuild.
 13 JUDGE BIRO: When you did the
 14 Turnagain property, were you aware if there were
 15 any children living in the houses next door?
 16 MR. VON MAREES: No, Your Honor,
 17 because that area where I worked, it's a lot of
 18 adult people. Even if you look in front of the
 19 house, to the left side there is two older
 20 gentlemen. And to the right side there is an
 21 older, single lady. That she lives by herself.
 22 And in the house that I worked on, a

1 gentleman lived in that house where I worked by
 2 himself. Which he had a company of painting
 3 called Algora Painting. Who was mugged and
 4 killed. They killed him in his own store for
 5 \$100.
 6 That house passed on to the estate
 7 sale where Mr. Warfield purchased it for
 8 \$250,000. Meaning that that neighborhood, that
 9 neighborhood is a neighborhood of very high,
 10 expensive houses.
 11 JUDGE BIRO: So how about the house
 12 behind the Turnagain house or in front of it or
 13 across the street from it? Were there any
 14 children or pregnant women in those houses?
 15 MR. VON MAREES: No children. It was
 16 just a lot of adults in that neighborhood.
 17 JUDGE BIRO: So how long in total has
 18 GreenBuild been in operation in Alaska doing
 19 renovations?
 20 MR. VON MAREES: I started in 2003
 21 with a flooring company. It was called Perfect
 22 Floor. In 2007 I created GreenBuild because many

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1 clients would ask me if I can change a window or
2 change a chimney or remodel a bathroom.

3 But thank God to ability in
4 construction and my intelligence I changed my
5 route from doing flooring because of the problem
6 that I had in my back already to do something
7 that I would be standing more often and not just
8 on my knees.

9 JUDGE BIRO: Is there anything else
10 you want to tell me that you haven't already told
11 me in regard to this case?

12 MR. VON MAREES: Your Honor, right
13 this moment I don't have anything else in mind.
14 Right now I have told you everything that is on
15 my mind because this has been four years ago.
16 This was in 2018.

17 JUDGE BIRO: Okay. I am going to give
18 Mr. Futerman or Ms. Meinhardt an opportunity to
19 ask you questions. When they are done you can
20 tell me anything that has come to your mind that
21 you haven't told me before.

22 MR. VON MAREES: Perfect.

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1 JUDGE BIRO: So right now you just
2 answer their questions.

3 MR. VON MAREES: Okay.

4 JUDGE BIRO: Mr. Futerman.

5 MR. FUTERMAN: Thank you, Your Honor.
6 Mr. Von Marees, a few things to chat with you
7 about today, but let's start with the letter the
8 EPA sent you.

9 INTERPRETER AQUINO: Counsel, we need
10 to take it by parts because now we're going --

11 MR. FUTERMAN: I'm sorry. I thought
12 you were doing the simultaneous thing. I'll
13 stop.

14 INTERPRETER AQUINO: I am. I am going
15 to. That's why you didn't give me the chance to
16 switch because then I need to give you the
17 response.

18 So that's why -- I don't know if you
19 guys want me to stay here or do you guys want me
20 to go back? How do you guys want to do it?

21 MR. FUTERMAN: Whatever is easiest for
22 you.

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1 INTERPRETER AQUINO: So let's take it
2 by parts and let's do it consecutive so that we
3 can all stay --

4 MR. FUTERMAN: Yes, ma'am.

5 INTERPRETER AQUINO: Okay. Let's go.

6 MR. FUTERMAN: Okay.

7 CROSS EXAMINATION

8 BY MR. FUTERMAN:

9 Q So, Mr. Von Marees, can we start by
10 talking about the letters that EPA sent to you.
11 So you said during your testimony that EPA was
12 sending you a lot of letters and kept sending you
13 letters.

14 And I am wondering if you spoke to
15 your wife about the telephone calls and if your
16 wife was involved with the legal documents filed
17 in this case did you also speak to your wife
18 about these letters?

19 A Like I have previously said I have
20 said things that the interpreter has not been
21 saying very clear. I said I received a lot of
22 letters, not only of EPA.

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1 Many of those that I have received not
2 only from EPA but all the letters I have received
3 I have tried to give it to my wife for her to
4 translate to me and explain what are they in
5 reference to.

6 Many times my wife does not have the
7 time and many times it's just been times where
8 people have been just trying to sell me things
9 and many of those letters, like they appear here
10 on this booklet, I have never seen them before.

11 Q Mr. Von Marees, you live at 11221
12 Olive Lane, Anchorage, Alaska, correct?

13 A That's my office.

14 Q Okay. Thank you, Mr. Von Marees. So
15 I just want to clarify your answer to the first
16 question.

17 So are you saying that you did, in
18 fact -- Letters that the EPA sent you, you did,
19 in fact, share with your wife?

20 A No. Many of these letters that appear
21 here in the folder I have never even seen them
22 ever before.

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1 Q Mr. Von Marees, and your address is
 2 11221 Olive Lane, Anchorage, Alaska, correct?
 3 INTERPRETER AQUINO: Excuse me?
 4 BY MR. FUTERMAN:
 5 Q Mr. Von Marees, your address is 11221
 6 Olive Lane, Anchorage, Alaska, correct?
 7 A Yes. Let me explain.
 8 Q No, let's move on. Thank you. So I
 9 want to talk to you a little bit about --
 10 MR. FUTERMAN: My apologies, Ms.
 11 Aquino.
 12 BY MR. FUTERMAN:
 13 Q So let's talk about your work on the
 14 Turnagain property.
 15 A I am going to explain to you what
 16 happens with the address of my office.
 17 Q Mr. Von Marees? Mr. Von Marees?
 18 JUDGE BIRO: Mr. Von Marees, that's
 19 the kind of thing that you will be able to tell
 20 me later.
 21 MR. VON MAREES: Okay. Okay.
 22 BY MR. FUTERMAN:

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1 the terms of this contract with the owners of the
 2 Turnagain property?
 3 A Unfortunately, no.
 4 Q Okay, Mr. Von Marees.
 5 MR. FUTERMAN: Mr. Crawley, can we
 6 please turn to Page 10 of this document.
 7 MR. VON MAREES: Okay.
 8 BY MR. FUTERMAN:
 9 Q Mr. Von Marees, this is the scope of
 10 work that you agreed to perform at the Turnagain
 11 property, is it not?
 12 A Yes, it is, but this is a copy that
 13 they give to all the houses that they have.
 14 Q Okay. Mr. Von Marees --
 15 A That they give --
 16 Q Excuse me.
 17 A They give, not me.
 18 Q Mr. Von Marees --
 19 (Simultaneous speaking.)
 20 INTERPRETER AQUINO: I'm sorry?
 21 MR. FUTERMAN: Mr. Von Marees answered
 22 the question. Mr. Crawley, would you please turn

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1 Q Okay. So let's talk about your work
 2 at the Turnagain property.
 3 A Yes.
 4 MR. FUTERMAN: Mr. Crawley, can we
 5 look at CX8, please?
 6 You can just go up to the top. Thank
 7 you so much, Mr. Crawley.
 8 BY MR. FUTERMAN:
 9 Q Mr. Von Marees, do you recognize this
 10 document?
 11 A Yes.
 12 Q On the first page this says that this
 13 is a contract between the owners of the Turnagain
 14 property and GreenBuild Design & Construction,
 15 correct?
 16 A Yes.
 17 Q And this document identifies
 18 GreenBuild Design & Construction as the
 19 contractor, correct?
 20 A Yes.
 21 Q And, Mr. Von Marees, did you or your
 22 wife, did a representative of GreenBuild discuss

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1 to Page 13.
 2 BY MR. FUTERMAN:
 3 Q We'll look at under Paragraph Number
 4 12. So, Mr. Von Marees, you agreed to pressure
 5 wash and paint the exterior, correct?
 6 A Yes, but that there were change
 7 orders.
 8 MR. FUTERMAN: Okay. Mr. Crawley, can
 9 we please turn to CX9, please?
 10 BY MR. FUTERMAN:
 11 Q Mr. Von Marees, this is the invoice
 12 that you provided to the owners of the Turnagain
 13 property, correct?
 14 INTERPRETER AQUINO: I'm sorry,
 15 counsel. I am just directing him we cannot speak
 16 over each other. This is an issue. We have to
 17 wait in order to let the other person speak.
 18 MR. VON MAREES: Yes.
 19 BY MR. FUTERMAN:
 20 Q So this is an invoice that you, your
 21 wife, the business, created?
 22 A Yes, my wife.

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1 Q Thank you, Mr. Von Marees.
 2 MR. FUTERMAN: Mr. Crawley, can we
 3 please turn to CX10. Actually, Mr. Crawley,
 4 that's okay. I don't need to talk about CX10.
 5 Can you just un-publish for the moment.
 6 BY MR. FUTERMAN:
 7 Q So, Mr. Von Marees, you said earlier
 8 that you tested the Turnagain property four
 9 times, is that correct?
 10 A Four times different items. Windows,
 11 doors, trims, and floor.
 12 Q Okay. Where specifically did you test
 13 those items?
 14 A Windows, doors, floor, and ceilings.
 15 Q Okay. Mr. Von Marees, the exhibit
 16 that you submitted to this Court had four circles
 17 on it that were colored red. You said that you
 18 conducted four tests.
 19 A Yes.
 20 Q Okay. So you couldn't have tested
 21 every window if you conducted four tests. So
 22 which window did you test, which ceiling did you

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1 when you took that test?
 2 A Inside the house.
 3 Q Thank you, Mr. Von Marees. And did
 4 you test anywhere outside of the house for the
 5 presence of lead?
 6 A Yes.
 7 Q Where did you test?
 8 A The garage door.
 9 Q Okay. And where on the house is the
 10 garage door, is it the front of the house?
 11 A Yes.
 12 Q Okay. So can we confirm what the four
 13 areas that you tested were?
 14 A Window, door, drywall ceiling, the
 15 floor.
 16 Q Okay. But I thought you just said
 17 that you tested the garage door. You just said
 18 that you know the door --
 19 (Simultaneous speaking.)
 20 A They were no room doors. It was
 21 already demolished.
 22 Q So the door that you just said was the

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1 test, et cetera?
 2 A In every project that you see that all
 3 the windows are the same you don't need to test
 4 all the windows. If all the windows are the same
 5 you only test one. The doors, the same.
 6 Q Mr. Von Marees, my question is which
 7 window did you test, which door did you test?
 8 A I do not understand. What do you want
 9 me to give the window a name, a number? I do not
 10 understand.
 11 Q Sure. Mr. Von Marees, okay, can you
 12 confirm you tested one window and you tested one
 13 door?
 14 A Yes.
 15 Q Which side of the house was the window
 16 on?
 17 A In the front.
 18 Q Okay. And did you test the inside of
 19 that window or the outside of that window?
 20 A The frame of the window.
 21 Q Okay. Were you standing inside the
 22 house or were you standing outside of the house

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1 garage door?
 2 A Yes, sir.
 3 Q Okay. So you did not test anywhere on
 4 the rear of the property?
 5 A Not necessarily.
 6 Q Okay. And you did not test anywhere
 7 on the trim between the wall and the roof of the
 8 property?
 9 A There were no trims.
 10 Q I mean I don't know what the right
 11 construction word is, the eaves, the soffits, the
 12 white piece of wood between the wall and between
 13 the roof? I can show you a picture if you want.
 14 A There was none. You can see it CX38.
 15 MR. FUTERMAN: Okay. Mr. Crawley,
 16 would you please put up CX38?
 17 BY MR. FUTERMAN:
 18 Q Now with respect, Mr. Von Marees,
 19 that's not what I am looking at.
 20 A CX51 is another picture.
 21 MR. FUTERMAN: Mr. Crawley, can we
 22 look at CX43, please?

1 BY MR. FUTERMAN:
 2 Q Yes, Mr. Von Marees, this white piece
 3 of wood, this white area between the roof and the
 4 wall?
 5 A We did not touch that. We did not
 6 touch that. We just put all new siding on top.
 7 Q Okay. Thank you, Mr. Von Marees. Mr.
 8 Von Marees, earlier you were talking to Judge
 9 Biro about the State certification that your wife
 10 has. Can I just clarify, do you have that
 11 certification?
 12 A No, the certification can be taken
 13 just by being a member and owner of the company.
 14 Q Okay, understood.
 15 (Simultaneous speaking.)
 16 Q No, Mr. Von Marees --
 17 A Only one can take the certification.
 18 Q Okay. You answered my question, Mr.
 19 Von Marees. So, but to clarify, you were the
 20 individual who took these lead tests at the
 21 Turnagain property?
 22 A Yes.

1 State of Alaska in your name, correct?
 2 A Yes.
 3 Q And that business address is listed as
 4 11221 Olive Lane, Anchorage, Alaska, correct?
 5 A Yes.
 6 MR. FUTERMAN: Okay. Mr. Crawley,
 7 could we please look at CX112, 112.
 8 MR. VON MAREES: Okay. I got there.
 9 INTERPRETER LOPEZ: Okay.
 10 MR. VON MAREES: That's Greenbuild
 11 Landscape's license.
 12 (Whereupon, the above-referred to
 13 document was marked as Complainant Exhibit No.
 14 112 for identification.)
 15 BY MR. FUTERMAN:
 16 Q And, Mr. Von Marees, you filed this
 17 document with the State of Alaska, did you not?
 18 A Yes, sir.
 19 MR. FUTERMAN: Mr. Crawley, can we
 20 please look at CX113, 113?
 21 (Whereupon, the above-referred to
 22 document was marked as Complainant Exhibit No.

1 Q Okay. But prior to your work on the
 2 Turnagain property you, yourself, were not
 3 certified by anyone about these lead tests?
 4 A I was not certified for EPA.
 5 Q Were you certified by anyone?
 6 A GreenBuild is certified for the
 7 municipality and the State of Alaska.
 8 INTERPRETER AQUINO: Okay, we're
 9 switching.
 10 BY MR. FUTERMAN:
 11 Q So is the answer to my question no,
 12 that you, Mr. Von Marees, were not certified?
 13 A I am representing GreenBuild. I was
 14 certified.
 15 Q Okay. Mr. Von Marees, in March of
 16 2022 you started a new business, did you not?
 17 A I just finished getting the license,
 18 yes.
 19 Q And that business's name is GreenBuild
 20 Design & Landscape, LLC, correct?
 21 A Yes.
 22 Q And that business is registered in the

1 113 for identification.)
 2 BY MR. FUTERMAN:
 3 Q And, Mr. Von Marees, you filed this
 4 document with the State of Alaska, did you not?
 5 A Yes, sir.
 6 MR. FUTERMAN: Mr. Crawley, can we
 7 please look at CX111?
 8 (Whereupon, the above-referred to
 9 document was marked as Complainant Exhibit No.
 10 111 for identification.)
 11 BY MR. FUTERMAN:
 12 Q And, Mr. Von Marees, the State issued
 13 you this certificate, correct?
 14 A Yes, sir.
 15 MR. FUTERMAN: Your Honor,
 16 Complainant moves to admit CX111 through 113.
 17 JUDGE BIRO: Mr. Von Marees, do you
 18 have any objection to the admission of
 19 Complainant's Exhibit 111 to 113?
 20 MR. VON MAREES: Yes. Why, for what
 21 reason are you involving something that is
 22 totally different from GreenBuild Design &

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1 Construction?

2 INTERPRETER LOPEZ: That's a question.

3 JUDGE BIRO: I understood. I am

4 thinking.

5 INTERPRETER LOPEZ: I just told him

6 that Your Honor is thinking. Let her think.

7 MR. FUTERMAN: Your Honor, I would be

8 happy to further voir dire the witness and we can

9 revisit the admission in a moment.

10 JUDGE BIRO: The issue here for me,

11 Mr. Futerman, is relevancy. I would normally not

12 think they are relevant except for the fact that

13 he brought up on his own direct testimony the

14 issue of this new company he created.

15 So because he brought up the issue of

16 the new company in his own testimony you are

17 allowed to cross examine him on it and so I think

18 it's relevant.

19 So I am going to admit Complaint's

20 Exhibits 111 through 113 over the Respondent's

21 objection.

22 (Whereupon, the above-referred to

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1 happening is I have been having health problems.

2 I haven't been able to be 100 percent

3 concentrating on my job.

4 The times that I have had to leave my

5 helper there alone because of my health and I'd

6 return back to the job and my customers and

7 clients say, hey, what happened here, and I look,

8 because of that I have been starting to get, I

9 have problems.

10 Together with that, it's hard to get

11 anyone to work. There is no workers. No one

12 wants to work now.

13 Q Okay, understood. But I mean you have

14 a good reputation, you do good work. Like once

15 your health fully recovers, once the pandemic

16 slows down, are you saying that you are never

17 going to do renovation services again?

18 A Mr. Futerman, I don't want to do any

19 more renovations. I got bored with renovations.

20 All they are is just a big headache.

21 Q Okay. Mr. Von Marees, we looked

22 earlier at the picture of your truck, the picture

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1 documents were received into evidence as

2 Complainant Exhibit Nos. 111-113.)

3 MR. FUTERMAN: Thank you, Your Honor.

4 BY MR. FUTERMAN:

5 Q So, Mr. Von Marees, I am wondering, if

6 you testified here today a few times that you

7 have a small business that you are trying to grow

8 why are you starting a new business?

9 A Because the construction company

10 didn't do, didn't go well.

11 Q So, Mr. Von Marees, the quality of

12 work that you have done at the Turnagain

13 property, at the other properties that we've seen

14 was really good work.

15 A Thank you very much.

16 Q So I am wondering -- I mean I am

17 wondering about your reputation in the community.

18 It seems to me like if you are getting jobs with

19 these flippers, if you're doing really good

20 quality of work that you must have a good

21 reputation?

22 A I will explain to you. What's

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1 of your trailer. Do you still have that

2 equipment?

3 A Yes. That truck is on my name. That

4 is my personal truck.

5 Q Okay. And you are still using that

6 truck, that trailer, to do the landscaping work?

7 A Not yet. I don't even have any

8 customers yet. Yes, I use that truck every day.

9 Q Okay. And just to be clear, I know

10 you said you are not going to do any renovation

11 work, but is GreenBuild Design & Landscape EPA

12 firm certified under the RRP Rule?

13 INTERPRETER LOPEZ: Is it what build,

14 sir, the last part of your question?

15 BY MR. FUTERMAN:

16 Q Is it EPA firm certified under the RRP

17 Rule?

18 A The thing is to do landscaping and

19 yard work. I don't know what EPA has to do with

20 that.

21 Q I am just clarifying, is it EPA firm

22 certified?

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1 A No.
 2 Q Okay. Thank you.
 3 MR. FUTERMAN: I have no further
 4 questions, Your Honor.
 5 JUDGE BIRO: Okay. Mr. Von Marees,
 6 now is an opportunity to tell me anything, any
 7 thoughts that came up while Mr. Futerman was
 8 questioning you.
 9 MR. VON MAREES: Your Honor, I think
 10 here Mr. Futerman is trying to involve apples to
 11 pears. He is trying to involve two different
 12 things here.
 13 As far as I know the law, a person
 14 could have thousands of companies if they want
 15 to. I don't know why he is focusing on the fact
 16 if one company went bad why I can't start another
 17 company of another genre.
 18 JUDGE BIRO: Okay. Anything else you
 19 want to tell me?
 20 MR. VON MAREES: That would be all,
 21 Your Honor.
 22 JUDGE BIRO: Mr. Futerman, are there

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1 guys can call him.
 2 JUDGE BIRO: I don't want to call him.
 3 I don't call witnesses in this proceeding. It's
 4 whether you would like to call him as a witness
 5 and (audio interference) come and testify now?
 6 MR. VON MAREES: My question would be
 7 how would we call him, by phone?
 8 JUDGE BIRO: Or you could send him the
 9 link that we all used to access the hearing.
 10 MR. VON MAREES: Yes, I can send him
 11 the link that you guys sent me.
 12 JUDGE BIRO: Okay. Well how long do
 13 you think it will take you to get him to call in
 14 so we can get his testimony?
 15 MR. VON MAREES: If you give me a
 16 minute I'll try to contact him.
 17 JUDGE BIRO: Okay. We'll take a 5-
 18 minute recess till 7:10, my time, which is, what,
 19 3:10 your time.
 20 MR. VON MAREES: Yes.
 21 JUDGE BIRO: And you can see if you
 22 can get him to call in on the link or access the

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1 any follow-up questions you want to ask?
 2 MR. FUTERMAN: No, Your Honor.
 3 JUDGE BIRO: Mr. Von Marees, are there
 4 any documents that you would like to introduce
 5 into evidence that are in the booklet that we
 6 talked about today?
 7 MR. VON MAREES: Your Honor, I would
 8 like to say something personal. I am a very bad
 9 person when it comes to papers, very bad when it
 10 comes to papers.
 11 The only thing I want is for this to
 12 finish. My head is --
 13 (Simultaneous speaking.)
 14 MR. VON MAREES: And because of that
 15 I will let you know that I am not good at
 16 paperwork. I don't do the paperwork very well.
 17 All the evidence that I had was the tests that I
 18 took, my certifications, which I turned in.
 19 JUDGE BIRO: Okay. Would you like to
 20 call Mr. Maple as a witness in this matter and
 21 have him come and testify?
 22 MR. VON MAREES: Yes, if you want you

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1 link and then we'll take his testimony. Okay.
 2 MR. VON MAREES: Perfect.
 3 (Whereupon, the above-entitled matter
 4 went off the record at 7:03 p.m. and resumed at
 5 7:16 p.m.)
 6 JUDGE BIRO: Okay, we're going back on
 7 the record. I understand that Mr. Maple has
 8 called into the hearing, is that correct?
 9 MR. MAPLE: Yes, ma'am.
 10 JUDGE BIRO: Hi, Mr. Maple, this is
 11 Judge Susan Biro. I know you apparently cannot
 12 see me unless you have access to video, do you?
 13 MR. MAPLE: I do not, I'm just on my
 14 cell phone.
 15 JUDGE BIRO: Okay. All right, well,
 16 Mr. Von Marees would like you to testify in this
 17 matter on his behalf, and are you willing to do
 18 that?
 19 MR. MAPLE: Yes, ma'am.
 20 JUDGE BIRO: Okay. So the court
 21 reporter's going to swear you in and then Mr. Von
 22 Marees is going to ask you questions, he asks

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1 them in Spanish and the interpreter will
 2 interpret his questions, and then you can answer.
 3 MR. MAPLE: All right.
 4 JUDGE BIRO: Okay. Mr. Court
 5 Reporter, would you please swear in the witness?
 6 WHEREUPON,
 7 PAUL BENJAMIN MAPLE
 8 was called for examination by Counsel for the
 9 Respondent and, after having been duly sworn, was
 10 examined and testified as follows:
 11 JUDGE BIRO: Okay, Mr. Maple, could
 12 you please state your full name for the record?
 13 THE WITNESS: Paul Benjamin Maple.
 14 JUDGE BIRO: And what is your home
 15 address?
 16 THE WITNESS: 10207 Wildwood Street,
 17 Eagle River, Alaska, 99577.
 18 JUDGE BIRO: Okay, thank you very
 19 much. Mr. Von Marees, please proceed and ask Mr.
 20 Maple whatever questions you would like.
 21 DIRECT EXAMINATION
 22 MR. VON MAREES: Hi, Paul. Do you

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1 Why don't we try again, Ms. Aquino, can you ask
 2 again?
 3 INTERPRETER AQUINO: (foreign language
 4 spoken.)
 5 MR. VON MAREES: (Speaking for
 6 himself) No, English.
 7 INTERPRETER AQUINO: I'm sorry. Mr.
 8 Maple, do you remember the job that we performed
 9 in Turnagain?
 10 (No audible response.)
 11 JUDGE BIRO: Mr. Maple, did you hear
 12 that question?
 13 THE WITNESS: I have heard absolutely
 14 nothing, it's just silence.
 15 INTERPRETER AQUINO: Oh --
 16 (Simultaneous speaking.)
 17 JUDGE BIRO: Okay. I'm going to ask
 18 you the question, do you recall the work that you
 19 and Mr. Von Marees did on the Turnagain property?
 20 THE WITNESS: I believe so.
 21 JUDGE BIRO: Okay. Mr. Von Marees, go
 22 ahead.

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1 remember the job that we did in Turnagain?
 2 (No audible response.)
 3 INTERPRETER AQUINO: Senor Paul, is
 4 this good, sir?
 5 THE WITNESS: Yes, I'm here. I can
 6 hear, I don't understand Spanish, though.
 7 INTERPRETER AQUINO: That's why I am
 8 saying it in English, can you hear me?
 9 JUDGE BIRO: Can you not hear the
 10 translator?
 11 (Simultaneous speaking.)
 12 INTERPRETER AQUINO: Mr. Maple, can
 13 you hear me?
 14 Can everyone else hear me?
 15 MR. VON MAREES: (Speaking for
 16 himself) Paul, can you hear me?
 17 THE WITNESS: Yes, I can hear you
 18 fine.
 19 MR. VON MAREES: (Speaking for
 20 himself) Can I ask in English?
 21 JUDGE BIRO: I'd prefer if you didn't,
 22 I don't know why he can't hear the translator.

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1 MR. VON MAREES: Paul, do you remember
 2 the people from EPA, when they visited us at the
 3 job?
 4 THE WITNESS: I'm still not hearing
 5 anything.
 6 JUDGE BIRO: Okay. I don't know how
 7 to fix that exactly.
 8 INTERPRETER AQUINO: I don't
 9 understand how he can hear Mr. Von Marees and he
 10 cannot hear me, we're all on the same --
 11 INTERPRETER LOPEZ: How about if I try
 12 -- Your Honor, what if I try? This is Luis
 13 Lopez.
 14 JUDGE BIRO: Sure, that would be
 15 great.
 16 INTERPRETER LOPEZ: Mr. Paul, do you
 17 hear me?
 18 Mr. Paul Maple, do you hear me?
 19 JUDGE BIRO: Okay. I'm going to ask
 20 the questions as we go along because it's the
 21 only way to get done here.
 22 INTERPRETER LOPEZ: He doesn't hear

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1 either one of us, Your Honor. I'm sorry.
 2 JUDGE BIRO: Right, but apparently he
 3 hears me so in order to get --
 4 (Simultaneous speaking.)
 5 INTERPRETER AQUINO: Okay.
 6 JUDGE BIRO: I'm going to be the
 7 translator. I am going to translate --
 8 (Simultaneous speaking.)
 9 INTERPRETER AQUINO: Thank you.
 10 INTERPRETER LOPEZ: You're going to be
 11 -- you're going to actually be the interpreter
 12 for the interpreter.
 13 JUDGE BIRO: No, no, I'm not. I'm not
 14 -- once you interpret, Ms. Aquino, I will just
 15 repeat what you tell me.
 16 INTERPRETER AQUINO: Okay.
 17 INTERPRETER LOPEZ: That'll work.
 18 MR. VON MAREES: Perfect.
 19 JUDGE BIRO: I think the question was,
 20 Mr. Maple, do you recall when the EPA inspectors
 21 came to the Turnagain site?
 22 MR. VON MAREES: To visit us.

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1 what Agent Kim told me that day when we were
 2 speaking?
 3 THE WITNESS: If I remember right it's
 4 that, we were getting off with a warning and that
 5 if, I believe, it was if she got a hold of, like,
 6 all our sub-information or something like that
 7 that it would just be that, just a warning.
 8 MR. VON MAREES: Those are all my
 9 questions for him.
 10 JUDGE BIRO: Okay. Mr. Futerman or
 11 Ms. Meinhardt, do you have any questions you'd
 12 like to ask Mr. Maple?
 13 MS. MEINHARDT: Yes we do, Your Honor,
 14 just a few.
 15 JUDGE BIRO: Mr. Futerman -- Mr.
 16 Maple, can you hear Ms. Meinhardt?
 17 THE WITNESS: Yes, I can, I believe
 18 so.
 19 JUDGE BIRO: Okay. Please proceed.
 20 MS. MEINHARDT: Thank you, Your Honor.
 21 CROSS EXAMINATION
 22 BY MS. MEINHARDT:

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1 THE WITNESS: I do.
 2 MR. VON MAREES: Paul, how many agents
 3 were there that day?
 4 JUDGE BIRO: Mr. Maple, how many
 5 agents came to the site that day?
 6 THE WITNESS: I recall two.
 7 MR. VON MAREES: What were those
 8 agents doing?
 9 JUDGE BIRO: What were those agents
 10 doing?
 11 THE WITNESS: One was walking around,
 12 the other one was talking, essentially.
 13 (Simultaneous speaking.)
 14 MR. VON MAREES: Speaking to who,
 15 Paul?
 16 JUDGE BIRO: Speaking to who, Paul?
 17 THE WITNESS: Rodrigo, Mr. Von
 18 Marees.
 19 MR. VON MAREES: Paul, do you remember
 20 what Agent Kim told me that day when we were
 21 speaking?
 22 JUDGE BIRO: Paul, do you remember

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1 Q Mr. Maple, do you speak Spanish?
 2 A No.
 3 Q Okay, so do you usually speak with Mr.
 4 Von Marees in English?
 5 A Yes.
 6 Q Thank you. Do you currently work for
 7 Greenbuild?
 8 A I do. We're on break.
 9 Q Okay, how long is the break?
 10 A It's been since before Christmas,
 11 about six months.
 12 Q Okay, is that a typical seasonal break
 13 or is that unusual?
 14 A I guess it's kind of, it's a little
 15 atypical. We used to do a lot of construction,
 16 now it was transitioning over to landscaping.
 17 Q Okay, thank you. So you were doing
 18 jobs with Greenbuild before December 2021, would
 19 that be right?
 20 A Mm-hmm. Yes, ma'am --
 21 (Simultaneous speaking.)
 22 Q Sorry, was that a yes?

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1 A That was a yes.

2 Q Okay, thank you. And, Mr. Maple, how
3 long have you worked for Mr. Von Marees at
4 Greenbuild?

5 A Probably about six or seven years, off
6 and on.

7 Q Okay, thank you. And are you being
8 compensated for your testimony today?

9 A No.

10 Q Okay, thank you. You just mentioned
11 that you heard something about EPA inspectors
12 giving Greenbuild a warning, do you remember
13 exactly what you heard?

14 A I do not, that was a long time ago.
15 I do remember the conversation going back and
16 forth and then the lady just saying that she
17 would let it off as a warning.

18 Q Okay. And did you keep any notes from
19 that day about what you heard?

20 A No, why would I?

21 Q Okay, thank you. So during the time
22 that the EPA inspectors were on-site at the

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1 Turnagain Parkway house that you were working on,
2 what kind of work were you doing while they were
3 there?

4 A Siding.

5 Q Siding? Can you just tell us a little
6 bit about what you were doing with the siding?

7 A We were just installing new siding
8 over existing old siding.

9 Q Okay, thanks. And then were you doing
10 that work the whole time while the EPA inspectors
11 were there?

12 A The siding, yes.

13 Q Okay, so you were not taking part in
14 the conversation with the EPA inspectors and Mr.
15 Von Marees, is that correct?

16 A No, I was not a part of the
17 conversation, I was in earshot.

18 Q Okay, were they standing at the truck
19 having the conversation?

20 A Closer to the front of the house.

21 Q Okay, and then where were you
22 performing work on the siding?

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1 A On the front of the house, on a
2 ladder.

3 Q Okay.

4 MS. MEINHARDT: Your Honor, I would
5 like to confirm -- if it were possible, I would
6 show Mr. Maple a photo from evidence, I would
7 just like to confirm if he's one of the people in
8 the photo. I'm wondering if there's a way we can
9 work around doing that and not have it unduly
10 delay things --

11 (Simultaneous speaking.)

12 JUDGE BIRO: Mr. Maple, is this a
13 smartphone you have, could it take a message, or
14 can you receive an email on it?

15 THE WITNESS: It can take a message.

16 JUDGE BIRO: Can you send him that
17 picture by message, Ms. Meinhardt or Mr.
18 Futerman?

19 MS. MEINHARDT: Yes, we could.

20 JUDGE BIRO: Okay, please do that, and
21 advise me for the record what photo you're
22 sending him.

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1 MS. MEINHARDT: Okay, we will be
2 sending Mr. Maple CX 42 and CX 53.

3 Oh, and we need an email address,
4 then, for Mr. Maple so we can send it to him
5 right now.

6 JUDGE BIRO: I think he said he --
7 (Simultaneous speaking.)

8 JUDGE BIRO: -- could get a text
9 message, I'm not sure he can get email.

10 MS. MEINHARDT: We could just do CX
11 53, that would be sufficient. And we actually do
12 not have means to send him a text message, we do
13 not have government cell phones that can send
14 text messages.

15 We could send him CX -- no.

16 Okay. Your Honor, the other option
17 would be to have Mr. Von Marees confirm whether
18 somebody in the photo is Mr. Maple.

19 MR. VON MAREES: No, that is not
20 Maple.

21 MS. MEINHARDT: Okay, thank you. And
22 then my final --

1 (Simultaneous speaking.)
 2 MS. MEINHARDT: Thank you for that.
 3 BY MS. MEINHARDT:
 4 Q Mr. Maple, my final question is have
 5 you discussed this case with Mr. Von Marees in
 6 the last year?
 7 A Not in any detail.
 8 Q Could you clarify what you mean about,
 9 not in any detail, did you talk to him about
 10 receiving a warning from EPA?
 11 A No, I did talk to him about, he
 12 mentioned that he a court date coming up with you
 13 guys. I laughed then said, ha ha ha, you know,
 14 but that was about the extent of our
 15 conversation.
 16 Q Okay, he did not tell you what he was
 17 going to ask you about?
 18 A No.
 19 Q Okay.
 20 MS. MEINHARDT: Thank you, Your Honor,
 21 that's all my questions.
 22 JUDGE BIRO: Okay. Mr. Von Marees, do

1 we would be happy to recall Ms. Farnham to
 2 discuss that --
 3 (Simultaneous speaking.)
 4 MR. FUTERMAN: -- questions.
 5 We would be happy to recall her if
 6 there were additional questions there, but other
 7 than that, no.
 8 JUDGE BIRO: That's not necessary to
 9 help me, but if you want to do it for your case,
 10 you can.
 11 MR. FUTERMAN: Nope. Complainant's
 12 happy, Your Honor.
 13 JUDGE BIRO: Okay. We certainly don't
 14 need any closing arguments, there's an
 15 opportunity after this hearing, if you want to
 16 submit written documents, you'll be limited --
 17 (Simultaneous speaking.)
 18 JUDGE BIRO: -- to the evidence that
 19 was submitted here and accepted today. We should
 20 go over, for the record, to make sure we know
 21 exactly all the exhibits that were admitted into
 22 the record.

1 you have any questions you'd like to ask in
 2 response to Ms. Meinhardt's questions, to ask Mr.
 3 Maple in response to Ms. Meinhardt's questions?
 4 MR. VON MAREES: No, nothing.
 5 JUDGE BIRO: Okay. Thank you so much,
 6 Mr. Maple. Really, I appreciate you
 7 accommodating us in this way.
 8 THE WITNESS: Mm-hmm, you're welcome.
 9 JUDGE BIRO: Okay, you can leave now.
 10 Thank you very much, bye-bye.
 11 THE WITNESS: All right, thank you.
 12 Bye.
 13 JUDGE BIRO: Mr. Von Marees, is there
 14 any other testimony or documents you want to
 15 offer in this matter?
 16 MR. VON MAREES: No, Your Honor. I am
 17 good.
 18 JUDGE BIRO: Mr. Futerman, is there
 19 any rebuttal testimony you would like to offer?
 20 MR. FUTERMAN: Your Honor, when you
 21 were discussing with Mr. Von Marees the state
 22 program, it seemed to us you had some questions,

1 And let me just go over those with
 2 you, that would be Complainant's Exhibit 1, 3,
 3 4a, 6 to 12, 15 through 55, 59, 60, 76 through
 4 78, 80 through 83, 85, 87 to 89, 94 to 98, 100
 5 and 101, and 111 through 113. And that is the
 6 universe of documents that will be considered in
 7 rendering this decision, and which can be cited
 8 in any written material you submit after this
 9 hearing.
 10 MR. FUTERMAN: Yes, Your Honor.
 11 JUDGE BIRO: Once I get a copy of the
 12 transcript, which is, you know, a written
 13 document, Mr. Marees, of everything that was said
 14 today, I will look at that testimony along with
 15 the documents that were admitted into the record,
 16 any arguments that you submit after the hearing,
 17 and I will render my decision.
 18 It's a very time-consuming process and
 19 it is likely to take at least six months --
 20 (Simultaneous speaking.)
 21 MR. VON MAREES: (Speaking for
 22 himself) Okay.

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1 JUDGE BIRO: That's how things go.
 2 MR. VON MAREES: (Speaking for
 3 himself) Okay.
 4 JUDGE BIRO: I will send you my
 5 decision, I'll send all the parties my decision,
 6 in writing and you'll see my explanation for why
 7 I ruled the way I did.
 8 MR. VON MAREES: (Speaking for
 9 himself) Okay.
 10 JUDGE BIRO: Okay, and then it will
 11 have instructions on what your options are to do,
 12 based on that.
 13 MR. VON MAREES: (Speaking for
 14 himself) Okay.
 15 JUDGE BIRO: Okay?
 16 MR. VON MAREES: (Speaking for
 17 himself) Okay.
 18 JUDGE BIRO: Is there anything else
 19 anybody wants to tell me before we conclude the
 20 hearing?
 21 MR. FUTERMAN: Nothing from
 22 Complainant, Your Honor.

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1 JUDGE BIRO: And to our court reporter
 2 who too was very patient with our technical
 3 difficulties.
 4 INTERPRETER LOPEZ: Thank you, Your
 5 Honor. It was our pleasure.
 6 JUDGE BIRO: Thank you very much, have
 7 a lovely evening.
 8 (Whereupon, the above-entitled matter
 9 went off the record at 7:37 p.m.)
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1 JUDGE BIRO: Mr. Von Marees, yes?
 2 MR. VON MAREES: I would like to say
 3 that EPA and their attorneys have done a very
 4 intense job recollecting and putting all this
 5 evidence, but I would have loved if all this work
 6 that they have put together through months, if
 7 they would have actually been applied to a
 8 company which is actually contaminating, like
 9 many that I have seen myself personally here in
 10 Alaska, and no one does anything.
 11 JUDGE BIRO: Okay. Is there anything
 12 else?
 13 MR. VON MAREES: That's it.
 14 JUDGE BIRO: I would really like to
 15 extend my thanks to the translators who have been
 16 so patient --
 17 (Simultaneous speaking.)
 18 INTERPRETER AQUINO: Thank you.
 19 JUDGE BIRO: -- with all of our
 20 technical difficulties, and I'm really grateful
 21 to your excellent translation and your patience--
 22 INTERPRETER AQUINO: Thank you.

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