

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:	)	
	)	Docket No. TSCA-10-2021-0006
GREENBUILD DESIGN & CONSTRUCTION, LLC	)	
	)	<b>COMPLAINANT’S MOTION TO COMPEL DISCOVERY, OR IN THE ALTERNATIVE, MOTION IN LIMINE</b>
Anchorage, Alaska	)	
	)	
Respondent.	)	
_____	)	

**I. INTRODUCTION**

COMES NOW, the U.S. Environmental Protection Agency, Region 10 (“Complainant”), through its undersigned counsel, to respectfully request that this Court issue an Order compelling GreenBuild Design & Construction, LLC (“Respondent”) to submit certain documents relevant to the issue of Respondent’s ability to pay the proposed penalty of \$25,609. If Respondent should fail to produce such documents within the required timeframe, Complainant additionally requests that this Court grant an order in limine preventing Respondent from raising its ability to pay the proposed penalty and finding that Respondent has waived any such arguments. Pursuant to this Court’s February 3, 2021 Prehearing Order, Complainant contacted Respondent to inform it of this motion and asked if Respondent intends to object. It is unclear from Respondent’s reply whether Respondent objects to the motion.

Since the very beginning of this case, Respondent has continually referred to its status as a small business and how the proposed penalty in this case would be detrimental to its ability to stay in business.<sup>1</sup> Taking these assertions very seriously, and mindful of its duty with respect to a respondent’s

<sup>1</sup> See, e.g., Answer at 7 (referencing Complaint Paragraph 5.4: “Respondent denies that it owes a civil penalty. The civil penalty would cause a hardship to Respondent especially during a time of strict restrictions in place due to Covid.”); Respondent’s Prehearing Exchange at 2 (“GreenBuild Design & Construction LLC is a small business with less than five employees.”); Respondent’s Response to Complainant’s Motion for Accelerated Decision at 1 (“The Respondent, GreenBuild Design & Construction, is a small business with less than four employees.”); *Id.* at 2 (“EPA . . . impose[d] a penalty that Respondent would be unable to pay especially during this time of Covid.”).

ability to pay, CX 96 at 20, Complainant has repeatedly offered to evaluate Respondent's ability to pay the proposed penalty. *See* submitted CX 106–108.<sup>2</sup> But, in order to do so, Complainant must be granted access to Respondent's financial records and other materials that support Respondent's assertion that it cannot pay the proposed penalty. As the Environmental Appeals Board (“EAB”) has said, “in any case where ability to pay is put in issue, the Region *must* be given access to the Respondent's financial records before the start of such hearing.” *New Waterbury, Ltd.*, 5 E.A.D. 529, 554 (EAB 1994) (emphasis added). Complainant has attempted to explain to Respondent which financial records it would need in order to analyze Respondent's claim, CX 106–108, but Respondent has not provided Complainant with the necessary financial information.<sup>3</sup>

Therefore, Complainant requests that the Court issue the following discovery order:

Within 30 days of issuance of the discovery order, Respondent shall provide the following documents to the Court and to Complainant:

- (1) **Signed, Certified Statement.** A substantive statement with supporting information explaining the specific reasons why Respondent is claiming an inability to pay the proposed penalty.
- (2) **Federal Tax Returns.** True, accurate and complete copies of at least the last four years—2018, 2019, 2020, and 2021, if filed (hereinafter “the review period”)—of signed and dated U.S. corporate income tax returns of GreenBuild Design & Construction, LLC, including all associated schedules and attachments.
- (3) **Outside Financial Statements.** True, accurate and complete copies of the complete financial statements prepared on behalf of GreenBuild Design & Construction, LLC by an outside accountant, if such statements exist, including all balance sheets, statements of operations, statements of retained earnings, statements of cash flows, and all notes to each financial statement, for the review period. Submit complete copies of all financial statements, including the auditor's cover letter and all notes to the financial statements.

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<sup>2</sup> Simultaneous with this motion, Complainant has submitted a Supplemental Prehearing Exchange to include e-mail communications between Complainant's counsel and Respondent. Complainant has also attached those e-mails below. *See* Attachments A to C. Complainant believes that even if this Court were to determine that the attached e-mails are not admissible for substantive purposes, that they are still relevant to shed light on this motion. Therefore, Complainant respectfully offers them as attachments, intended to support its arguments herein.

<sup>3</sup> Respondent has submitted two pages of its 2019 form 1040 Schedule C. *See* Section III(c).

(4) **Annual Financial Statements.** If the statements requested in (3), above, do not exist, true, accurate and complete copies of internal financial statements prepared by GreenBuild Design & Construction, LLC, including all balance sheets, statements of operations, statements of retained earnings, statements of cash flows, analysis of performance relative to budget or forecast, and all notes to each financial statement, for all months/quarters which have occurred between the most recent fiscal year tax return and financial statement and the date of the hearing in this matter.

(5) **Year To Date Financial Statements.** True, accurate and complete copies of all year-to-date financial statements developed by GreenBuild Design & Construction, LLC for the years 2020, 2021, and 2022, including but not limited to projected income statements, balance sheets, and analyses of projected cash flows, whether month-by-month, by quarter, or for the year.

(6) **Assets and Liabilities.** True, accurate and complete copies of all documents reflecting the appraisal, fair market value or other valuation of all of GreenBuild Design & Construction, LLC's corporate assets, and true, accurate and complete copies of all documents reflecting the existence and the amounts, conditions and payment/repayment terms of all of GreenBuild Design & Construction, LLC's liabilities. Documents responsive to this request include, but are not limited to, all loan applications prepared for existing loans, the loan documents themselves, and current statements reflecting the balance(s) due.

(7) **LLC Management.** True, accurate and complete copies of (a) The names of senior LLC officers and each officer's total annual remuneration (i.e., salary, bonuses, options, perquisites) for each of the years of the review period.

(b) Indicate if any loans have been made between the LLC and an officer or Member for the review period. Also, disclose if any loan(s) have been made between the LLC and a relative or personal acquaintance of any LLC officer, Member or employee, and if so, the terms, conditions, and current status of each loan.

(c) For the review period, indicate if any other non-operating disbursements (e.g., grants, gifts, transfers, etc.) of assets have been made between the LLC and any of its officers, Members, employees or any relative or personal acquaintance of any LLC officer, Member or employee, and if so, the date and description of and the underlying reason for each disbursement.

(8) **Insurance.** True, accurate and complete copies of all current insurance policies which may provide coverage or reimbursement for any penalties, attorneys' fees or other costs incurred in connection with litigation related to the violations alleged in the complaint.

(9) **Asset Ledger.** True, accurate and complete copies of the asset ledger for all assets owned by GreenBuild Design & Construction, LLC during the review period.

(10) **Members.** True, accurate and complete copies of Stockholders/Partners/Members (hereinafter called Members) who hold the first eighty percent (80%) of the LLC's voting shares. For each Member named, indicate the type and percentage of shares held and the respective dollar value.

(11) **Litigation.** True, accurate and complete copies statements with relevant details if the LLC currently is, or anticipates being a party to, any litigation which has not been noted in the most recent financial statement and which could impact the LLC's financial situation.

(12) **Financial Settlements.** True, accurate and complete copies of statements with relevant details if the LLC currently is, or anticipates receiving or paying, a financial settlement which has not been noted in the most recent financial statements.

(13) **LLC Control and Affiliations.** True, accurate and complete copies of (a) for the review period, statements if the LLC controlled or controls, or was or is controlled by or affiliated with any other company or entity, domestic or foreign. For each company or entity, provide:

1. name, address and phone number
2. type of affiliation (e.g., subsidiary, parent, etc.)
3. names of senior officers and board of directors
4. description of any operational ties (e.g., provides administrative services, provides marketing services, etc.), and percentage of ownership and means of control.

(b) For the review period, statements indicating whether the LLC had or currently has any business with any other entity where an LLC officer, director or principal had or currently has a financial interest in or control of that other entity.

(14) **Credit.** True, accurate and complete copies of statements indicating (a) if the LLC has any lines of credit or other loans which have not been mentioned in the most recent financial statement, including the financial institution(s) or lender(s), the specific terms and conditions, and the current financial status of that line of credit or loan.

(b) If the LLC applied for and was denied credit (including a loan) during the review period, statements containing details of that credit request and denial (i.e., date applied for, amount, name of financial institution/lender, date denied, etc.), including a copy of the letter of denial from that financial institution/lender.

(15) **Market Conditions.** If market conditions are a negative factor affecting the LLC's current financial health, true, accurate and complete substantive statements with supporting information.

(16) **Other Assets.** If the LLC has a financial interest in, control of, or is the beneficiary of any asset (real estate, major equipment, aircraft, watercraft, etc.) in the U.S. or in another country that has not been identified in the LLC's federal tax returns or in other financial information provided to EPA, true, accurate and complete statements

identifying each asset by type of asset, estimated value, and specific location (e.g., address, state or country).

(17). **Forward Looking Statements.** True, accurate and complete “Forward looking statements” made or issued publicly by the LLC or someone acting on behalf of the LLC during the past year.

(18) **Additional Information.** True, accurate and complete statements of any additional substantive information which provides insight into its financial condition.

Complainant recognizes that Respondent may not have all of the information listed above readily available. Therefore, Complainant requests that Respondent submit, at a minimum, items numbered 1 through 5, above, and as much of the other requested materials as it can reasonably attain.<sup>4</sup>

If the information identified above is not provided to Complainant and the Court by the timeframe specified in the discovery order, Complainant requests that this Court issue an Order barring Respondent from proffering any testimony or other evidence relating to the issue of Respondent’s ability to pay the proposed penalty or the proposed penalty’s potential economic impact on Respondent.

## **II. STANDARD FOR GRANTING A MOTION FOR OTHER DISCOVERY**

Motions for additional discovery are governed by Section 22.19(e) of the Consolidated Rules of Practice. 40 C.F.R. § 22.19(e). This rule provides that, after the prehearing exchange has taken place, other discovery may be ordered only if such discovery: (i) will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party; (ii) seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and (iii) seeks information that has significant probative value on a disputed issue of

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<sup>4</sup> Because it is not possible to determine in advance what additional information may be needed to perform a complete ability to pay analysis, Complainant respectfully reserves the right to argue that the submission of more of the items listed herein is necessary. However, it is likely that Complainant will be able to generate a sufficiently accurate picture of Respondent’s financial condition with the submission of items 1 through 5, above.

material fact relevant to liability or the relief sought. As explained in Section III, below, this motion for other discovery satisfies each of these elements.

### **III. THIS COURT SHOULD GRANT COMPLAINANT'S MOTION FOR DISCOVERY**

#### **A. The Prehearing Exchange Has Taken Place**

The prehearing information exchanges in this case concluded with the filing and service of Complainant's Rebuttal Prehearing Exchange on May 24, 2021. Further, this Court's January 10, 2022 Hearing Order allows for the parties to file non-dispositive motions, such as motions for additional discovery, before March 4, 2022. Therefore, as the prehearing exchange has taken place and as this motion is filed prior to the March 4, 2022 deadline, it is appropriate for Complainant to file this motion for additional discovery.

#### **B. The Motion for Other Discovery will Neither Unreasonably Delay the Proceeding nor Unreasonably Burden the Non-moving Party**

This motion will not unreasonably delay the proceeding as the hearing has been scheduled with sufficient time for Respondent to be able to fully comply with the requested order. The hearing in this matter has been scheduled to begin on May 2, 2022. Complainant estimates that it would require approximately two weeks to analyze and respond to any financial information that Respondent submits. Accordingly, as long as Respondent submits responsive information prior to April 18, 2022, Complainant anticipates being able to analyze that information prior to the hearing. For Respondent to submit responsive documents by April 18, 2022, the requested discovery order, including the 30-day deadline, would need to be issued by March 18, 2022. As Complainant has filed this motion more than a month in advance of the March 18, 2022 deadline, it does not anticipate this process delaying the hearing.

Further, production of the information sought will not unreasonably burden Respondent. As Respondent is a business, Complainant anticipates that many of the records requested herein are kept in

the ordinary course of Respondent's operation. Such records are presumably already organized, as they consist of tax returns, financial statements, and documents relating to corporate assets and liabilities, which are records that a company must keep organized in order to prepare annual tax returns and meet its business obligations.

Complainant recognizes that producing documents that Respondent does not keep in the ordinary course of its business may be somewhat of a burden to Respondent. But the standard for determining the appropriateness of other discovery is whether the requested discovery would create an "unreasonable burden" on the non-moving party. Further, recognizing that Respondent may be unable to provide all of the documents requested, above, Complainant believes, without conceding, that as long as Respondent submits items 1 through 5, above, that would be a sufficient submission for these purposes. Therefore, the production of the information requested will not impose an unreasonable burden on Respondent.

It is also in Respondent's best interest to supply the requested information so that both the Court and Complainant may accurately assess Respondent's ability to pay a penalty. In the context of this proceeding, the production of this information could only serve to reduce the amount of the proposed penalty. Moreover, since Respondent put this matter at issue in the first place, it stands to reason that it would want to justify its concerns. As such, any burden imposed by this request is outweighed by the significant impact the information could have on these proceedings, and the benefit which may inure to Respondent.

**C. The Motion for Other Discovery Seeks Information that is Most Reasonably Obtained from the Non-Moving Party, and which the Non-Moving Party Has Refused to Provide Voluntarily**

Complainant seeks financial information which is solely in the possession of Respondent.

Complainant has already investigated all publicly-available sources of information concerning Respondent's financial condition, *see* CX 08, 09, 75–78, and has considered this information in its initial assessment of Respondent's ability to pay the proposed penalty. *See* CX 95 at 6–7. *See also*,

Complainant's Initial Prehearing Exchange at 33 (referencing Respondent's Answer at Paragraph 5.4). Complainant is unable to obtain the information requested in this motion—the information necessary to evaluate Respondent's alleged inability to pay claim—from any source other than Respondent. Therefore, the information sought by this motion is most reasonably obtained from Respondent.

Further, Respondent has refused to provide the requested information voluntarily. Complainant has repeatedly explained to Respondent the breadth of information it would need in order to evaluate Respondent's ability to pay the proposed penalty. *See* CX 106–108. This Court has also previously ordered Respondent to turn over precisely the type of material that Complainant is seeking here. *See* February 3, 2021 Prehearing Order at 3 (“if Respondent takes the position that the proposed penalty should be reduced or eliminated on any grounds, such as an inability to pay, then provide a detailed narrative statement explaining the precise factual and legal bases for its position and a copy of any and all documents upon which it intends to rely in support of such position.”). Despite this, and despite plenty of opportunity to submit such information, Respondent has yet to provide anything resembling the level of detailed financial information Complainant needs in order to analyze Respondent's claim.

In March of 2021 Respondent provided Complainant with a portion of one year of its federal tax returns. Complainant requested Respondent's recent tax returns based on the Lead-Based Paint Graduated Penalty Approach Policy (“GPA Policy”).<sup>5</sup> But as one year of federal tax returns is insufficient for Complainant to analyze Respondent's ability to pay the proposed penalty—a fact that

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<sup>5</sup> *See* Lead-Based Paint Graduated Penalty Approach Policy (Sept 20, 2019), available at <https://www.epa.gov/sites/default/files/2019-10/documents/leadbasedpaintgraduatedpenaltyapproachpolicy092419.pdf>. Complainant has not placed the GPA Policy into the record, here, as it is not relevant to these proceedings. The GPA Policy offers EPA case teams a method of reducing proposed penalties for settlement purposes based on a respondent's gross annual revenue or net worth. GPA Policy at 2. If, after utilizing the GPA Policy, a respondent believes that it still does not have the ability to pay the proposed penalty, the case team would then proceed to a full ability to pay analysis. The GPA Policy is only applicable in settling a case. *Id.* at 4. As Respondent has declined to settle this case, the GPA Policy is not directly applicable here. *Id.*



Complainant has explained to Respondent numerous times—and as Respondent has not provided any further information, Respondent has failed to voluntarily provide the information sought in this motion.

**D. The Motion for Other Discovery Seeks Information that Has Significant Probative Value on a Disputed Issue of Material Fact Relevant to the Relief Sought**

This motion seeks information that has significant probative value on a disputed issue of material fact. Complainant believes that Respondent's ability to pay the proposed penalty is going to be a major point of contention at the forthcoming hearing. In every document that Respondent has filed with this Court to date, Respondent has referenced its status as a small business or how it would be unable to pay the proposed penalty. *See supra*, Footnote 1; Answer at 7; Prehearing Exchange at 2; Response to Accelerated Decision at 1, 2. Moreover, throughout all of Complainant's interactions with Respondent, Respondent has regularly asserted that it would be unable to pay the proposed penalty. *See CX 106–108*. Based on this history, Complainant believes that Respondent's main counterargument against the reasonableness of the proposed penalty will be rooted in Respondent's inability to pay that penalty.

But without additional information supporting Respondent's assertion, Complainant disagrees that Respondent cannot pay the proposed penalty. Here, Complainant has evaluated all of the information available to it regarding Respondent's financial status. CX 95 at 6–7. This included the review of publicly available information on Respondent's financial health. *See, e.g., CX 77, 78.*<sup>6</sup> This also included the review of Respondent's contract with the owners of the Turnagain Property, which provides that Respondent was to be paid \$127,000 for the renovation that is the subject of this action, CX 08 at 8, and an invoice that Respondent sent to the owners of the Turnagain Property indicating that the total amount Respondent was paid for this renovation was \$128,580. CX 09 at 2. *See also CX 59, 60*

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<sup>6</sup> CX 76 at 1 (commercially generated report estimating that Respondent's annual sales exceed \$100,000, that Respondent was in a growing field with an increasing demand, and estimating that similar businesses have annual sales anywhere from \$5,000 to \$1.2 million, with many near the \$100,000 mark); CX 77 at 4 (Westlaw Company Investigator Report estimating that Respondent's annual sales exceeded \$100,000).

(Invoices from subcontractors to Respondent indicating that Respondent paid them a total of \$12,675 for their work on the Turnagain Property). Based on this review, Complainant concluded that Respondent has the ability to pay the proposed penalty in this matter.

Complainant's approach to evaluating Respondent's purported ability to pay the proposed penalty in this case is precisely the approach that the EAB blessed in *New Waterbury*, 5 E.A.D. at 540. There, the EAB stated that "[s]ince the Agency must prove the appropriateness of the penalty, it necessarily follows that 'ability to pay' is a matter that the Agency takes into consideration as part of its prima facie case." *Id.* The EAB continued:

Where ability to pay is at issue going into a hearing, the Region [Complainant] will need to present some evidence to show that it considered the respondent's ability to pay a penalty. The Region . . . can simply rely on some general financial information regarding the respondent's financial status which can support the inference that the penalty assessment need not be reduced.

*Id.* at 538, 542–43. But "in any case where ability to pay is put in issue, the Region *must* be given access to the Respondent's financial records before the start of such hearing." *Id.* at 524 (emphasis added). *See also, Spitzer Great Lakes Ltd.*, 9 E.A.D. 302, 2000 WL 893127 (EAB June 30, 2000) (citing *New Waterbury*, 5 E.A.D. at 541) (noting that "since EPA's ability to obtain financial information about a respondent is limited at the outset of a case, a respondent's ability to pay may be presumed until it is put at issue by a respondent. Then, as the party with control over the relevant records, the respondent must, upon request, provide evidence to show that it is not able to pay the proposed penalty"); *United Global Trading, Inc.*, FIFRA-04-2011-3020 (E.P.A. Feb. 28, 2014) at 21 (finding that "Complainant has satisfied the relatively low burden of proof required" to show that it considered Respondent's ability to pay after Complainant submitted three relevant exhibits in the prehearing exchange); *Wisconsin Plating*

*Works of Racine, Inc.*, 2009 WL 1266817 (E.P.A., Apr. 30, 2009) (citing *New Waterbury* as ground for granting Complainant’s Motion to Compel Discovery of the same sort of financial records sought here).<sup>7</sup>

Therefore, as Complainant believes that Respondent’s ability to pay the proposed penalty will be contested at the hearing, and as this motion seeks information that is central to assessing the veracity of Respondent’s assertion, this motion seeks information that has significant probative value on a disputed issue of material fact. *Vemco, Inc.*, CAA-05-2002-0012, 2003 WL 1919589 (E.P.A. Mar. 28, 2003) (granting Complainant’s motion for discovery of information such as “complete and preferably audited financial statements and all corporate minutes for the last three years for Respondent”); *Mark Fastow and Fiberglass Specialties, Inc.*, EPCRA-09-97-0013, 1998 WL 422191 (E.P.A. June 24, 1998) (granting Complainant’s motion for discovery of respondent Fastow’s personal federal income tax returns for most recent five years).

**IV. SHOULD RESPONDENT FAIL TO COMPLY WITH THIS COURT’S ORDER FOR OTHER DISCOVERY, THIS COURT SHOULD GRANT COMPLAINANT’S MOTION IN LIMINE**

Should Respondent fail to comply with the requested order for other discovery, this Court should grant Complainant’s alternative motion in limine preventing Respondent from raising its ability to pay the proposed penalty as an argument at the forthcoming hearing and find that Respondent has waived any such arguments. When a party fails to provide information within its control as required by the Consolidated Rules, this Court may, in its discretion, infer that the information would be averse to that party, exclude the information from evidence, or issue a default order. 40 C.F.R. § 22.19(g).

As this case sits today, there are already sufficient grounds for this Court to determine that Respondent has waived its ability to argue that it cannot pay the proposed penalty. In *New Waterbury*,

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<sup>7</sup> See also, CX 96 at 20 (EPA’s *Consolidated Enforcement Response and Penalty Policy* providing, “[a]bsent proof to the contrary, EPA can establish a Respondent’s ability to pay with circumstantial evidence relating to a company’s size and annual revenue. Once this is done, the burden is on the respondent to demonstrate an inability to pay all or a portion of the calculated civil penalty”).

the EAB instructed that where a respondent “fails to produce any evidence to support an inability to pay claim after being apprised of that obligation during the pre-hearing process, the Region may properly argue and the presiding officer may conclude that any objection to the penalty based upon an ability to pay has been waived.” 5 E.A.B. at 524. Similarly, in *JHNY Inc.*, the EAB held that “by not complying with the prehearing exchange requirement to provide documentary evidence demonstrating its inability to pay the proposed penalty, [the Respondent] failed to raise its ability to pay as a cognizable issue. Thus, the company waived its ability to contest the Region’s penalty proposal on this basis.” 12 E.A.D. 372, 2005 WL 2902519, at \*19 (EAB Sept. 30, 2005).

Here, both Complainant and this Court have apprised Respondent of its obligation to produce evidence to support its claimed inability to pay. CX 106–108; February 3, 2021 Prehearing Order at 3. Yet Respondent still has not submitted any evidence related to this argument. *See generally* Respondent’s Prehearing Exchange. As such, adequate grounds exist for this Court to conclude that Respondent has failed to raise its ability to pay as a cognizable issue and thus waived its ability to do so at the hearing.

Nevertheless, recognizing that Respondent is currently appearing pro se and that Complainant would still be able to analyze Respondent’s claimed inability to pay the proposed penalty were Respondent to provide the necessary information, Complainant believes that allowing Respondent to submit such information is still warranted. However, if Respondent were to fail to produce the information requested herein by the deadline set by this Court, then it would be perfectly reasonable for this Court to conclude that Respondent has waived its ability to contest Complainant’s proposed penalty based on an alleged inability to pay. *See Spitzer Great Lakes*, 9 E.A.D. at \*13 (holding that “the Presiding Officer properly excluded consideration of ability to pay as a mitigating factor in assessing the penalty . . . [because] when asked by the Region, and directed by the Presiding Officer, to substantiate that claim, [Respondent] failed to respond”).

## V. CONCLUSION

This Court should grant Complainant's motion to compel additional discovery, due within 30 days of the date of the Order, because (1) doing so will not unreasonably delay the proceeding or unreasonably burden Respondent; (2) the information sought in this motion is most reasonably obtained from Respondent, who has refused to provide it voluntarily; and (3) the information sought in this motion has significant probative value on a disputed issue of material fact. Further, if Respondent fails to comply with the requested order for discovery, this Court should grant Complainant's alternative motion in limine preventing Respondent from raising its ability to pay the proposed penalty as an argument at the forthcoming hearing and find that Respondent has waived any such arguments.

Respectfully submitted,

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Andrew Futerman,  
Counsel for Complainant  
EPA Region 10

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

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **Complainant's Motion to Compel Discovery or in the Alternative Motion in Limine**, along with all attachments, dated February 15, 2022 was served on the following parties in manner indicated below:

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

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

Dated: February 15, 2022  
Chicago, Illinois.

Respectfully submitted,

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Andrew Futerman,  
Counsel for Complainant  
EPA Region 10