

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS

2018 DEC 26 AM 11:02

BEFORE THE ADMINISTRATOR

In the Matter of:

BARRERA BAUTISTA d/b/a
BAUTISTA PAINTING

Respondent.

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Docket No. TSCA-07-2019-0003

COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

This Complaint and Notice of Opportunity for Hearing (“Complaint”) serves as notice that the United States Environmental Protection Agency, Region 7 (“EPA” or “Complainant”) has reason to believe that Barrera Bautista d/b/a Bautista Painting (“Respondent”) has violated Section 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*, promulgated pursuant to 15 U.S.C. §§ 2682, 2686 and 2687.

COMPLAINT

Jurisdiction

1. This administrative action for the assessment of civil penalties is instituted pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and in accordance with EPA’s Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22, a copy of which is enclosed along with this Complaint.

Parties

2. Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA Region 7, is the Chief of the Toxics and Pesticides Branch at the EPA, Region 7.

3. Respondent Barrera Bautista is an individual doing business as Bautista Painting.

Statutory and Regulatory Background

4. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the “Act”), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based

paint hazards. One of the stated purposes of the Act is to implement a broad program to reduce lead-based paint hazards in the Nation's housing stock. 42 U.S.C. § 4851a(2). The Act amended TSCA by adding *Title IV—Lead Exposure Reduction*, Sections 401 to 412, 15 U.S.C. §§ 2681-2692.

5. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations regarding the activities of individuals and contractors engaged in lead-based paint activities, including renovation of residence built prior to 1978, and regulations for the certification of such individuals and contractors.

6. Pursuant to Section 402(a) of TSCA, 15 U.S.C. § 2682(a), the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart L, *Lead-Based Paint Activities*. See Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities, 61 Fed. Reg. 45778, 45813 (Aug. 29, 1996). Pursuant to Section 406(b) and Section 407 of TSCA, 15 U.S.C. §§ 2686(b) and 2687, the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*. See Lead; Requirements for Hazard Education Before Renovation of Target Housing, 63 Fed. Reg. 29908, 29919 (June 1, 1998). Finally, pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), the EPA amended and re-codified regulations at 40 C.F.R. Part 745, Subparts E and L, and added additional regulations at 40 C.F.R. Subpart L (the "Renovation, Repair, and Painting Rule" or the "RRP Rule"). See Lead; Renovation, Repair, and Painting Program, 73 Fed. Reg. 21692, 21758 (Mar. 31, 2008).

7. The RRP Rule establishes work practice standards for renovations that disturb paint in target housing and child-occupied facilities and requires firms and individuals performing, offering, or claiming to perform such renovations to obtain EPA certification.

8. The regulations at 40 C.F.R. §§ 745.80 and 745.82(a) provide that the regulations contained in 40 C.F.R. Subpart E, *Residential Property Renovation*, apply to all renovations performed for compensation in target housing and child-occupied facilities.

9. Section 401(17) of TSCA, 15 U.S.C. § 2681(17), defines *target housing* to mean any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

10. 40 C.F.R. § 745.83 defines "renovation" as the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by 40 C.F.R. § 745.223. The term renovation includes, but is not limited to, the removal, modification, or repair of painted surfaces or painted components (*e.g.*, modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (*e.g.*, walls, ceilings, plumbing, windows); weatherization projects (*e.g.*, cutting holes in painted surfaces to install blown-in insulation or to

gain access to attics, planing thresholds to install weather stripping); and interim controls that disturb painted surfaces.

11. 40 C.F.R. § 745.83 defines “firm” as a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

12. 40 C.F.R. § 745.83 defines “person” as any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

13. 40 C.F.R. § 745.81(a)(2)(ii) states that on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82.

14. 40 C.F.R. § 745.89(a)(1) provides that “firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.”

15. 40 C.F.R. § 745.89(d)(2) requires firms performing renovations to ensure a certified renovator is assigned to each renovation performed by the firm and that they discharge all the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

16. 40 C.F.R. § 745.84(a)(1) requires that, no more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must provide the owner of the unit with the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* (“EPA Pamphlet”). 40 C.F.R. § 745.84(a)(2) further requires that if the owner does not occupy the dwelling unit, the firm must provide an adult occupant of the unit with the pamphlet and comply with all requirements of 40 C.F.R. § 745.84(a)(2).

17. The RRP Rule sets forth the regulations for “Work Practice Standards” that must be followed by firms performing renovations on target housing. Pursuant to 40 C.F.R. § 745.81 (a)(4)(ii), all renovations must be performed in accordance with the work practice standards outlined in 40 C.F.R. § 745.85.

18. The regulation at 40 C.F.R. § 745.87(a) provides that failure or refusal to comply with any provision of 40 C.F.R. Part 745, Subpart E, is a violation of Section 409 of TSCA, 15 U.S.C. § 2689. 40 C.F.R. § 745.87(d) provides that violators may be subject to civil and criminal sanctions pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

19. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), as amended, and 40 C.F.R. § 745.87(d), authorizes a civil penalty of not more than \$37,500 per day for violations of Section 409 of TSCA, 15 U.S.C. § 2689. The Debt Collection Improvement Act of 1996, 31 U.S.C.

§ 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$38,892 for violations that occur after November 2, 2015, and are assessed after January 15, 2018.

General Factual Allegations

20. Respondent is, and at all times referred to herein was, operating as an individual and sole proprietor.

21. Respondent is, and at all times referred to herein was, a “person” and a “firm” as defined by 40 C.F.R. § 745.83.

22. On or about March 1, 2018, pursuant to its authority under Section 11 of TSCA, 15 U.S.C. § 2610, EPA Region 7 conducted a work practice inspection (“EPA inspection”) at the Respondent’s worksite at a residential property located at 2820 Harrison Street, Kansas City, Missouri (“unit”) to evaluate Respondent’s compliance with the RRP Rule. A copy of the inspection report was mailed to Respondent on or about April 6, 2018.

23. At the time of the EPA inspection, Respondent was engaged in renovation activities at the unit. The unit is a multi-family residential property, and Respondent was engaged in renovating two of the six apartments in the unit.

24. Respondent was not a certified renovation firm, nor was he a certified renovator when performing renovations at the unit.

25. At all times relevant to this Complaint, the renovation projects at the unit were “renovations for compensation” subject to the RRP Rule per 40 C.F.R. § 745.82.

26. At the time of the EPA inspection, the unit was not occupied. The unit was constructed in 1923. The unit was constructed before 1978 and is target housing as defined by 40 C.F.R. § 745.103.

27. As a result of the EPA inspection and additional information obtained by the EPA, Complainant has identified the following violations of Section 409 of TSCA, the Residential Lead-Based Paint Hazard Reduction Act of 1992, and the RRP Rule, as set forth in 40 C.F.R. Part 745, Subpart E.

Alleged Violations

28. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

Count 1

29. Each and every preceding paragraph is incorporated by reference herein.

30. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), firms performing renovations for compensation on or after April 22, 2010, must be certified by the EPA and have obtained initial certification prior to performance of renovations, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82. The regulation at 40 C.F.R. § 745.89(a)(1) requires firms that perform renovations for compensation to apply to the EPA for certification to perform renovations or dust sampling.

31. The EPA inspection revealed that Respondent had not applied for or obtained firm certification from the EPA to perform renovations or dust sampling prior to performing the renovations on the unit. Further, the renovation did not qualify for one of the exceptions identified in 40 C.F.R. § 745.82.

32. Respondent's failure to apply to the EPA for certification pursuant to 40 C.F.R. § 745.89(a)(1) prior to performance of the renovation of the unit is a violation of 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 2

33. Each and every preceding paragraph is incorporated by reference herein.

34. Pursuant to 40 C.F.R. § 745.89(d)(2), a firm performing renovations is required to ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90.

35. At the time of the EPA inspection, Respondent had not assigned a certified renovator to the renovations at the unit.

36. Respondent's failure to assign a certified renovator to the renovations at the unit is a violation of 40 C.F.R. § 745.89(d)(2). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 3

37. Each and every preceding paragraph is incorporated by reference herein.

38. Pursuant to 40 C.F.R. § 745.84(a)(1), a firm must provide the owner of a unit with the EPA Pamphlet no more than 60 days before beginning renovation activities.

39. Respondent had neither a signed acknowledgement of receipt of the EPA Pamphlet on file from the owner of the unit, nor evidence of certified mailing of the EPA

Pamphlet.

40. Respondent failed to provide the owner of the unit with the EPA Pamphlet no more than 60 days before beginning renovation activities.

41. Respondent's failure to provide the owner of the unit with the EPA Pamphlet no more than 60 days before beginning renovation activities is a violation of 40 C.F.R. § 745.84(a)(1). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 4

42. Each and every preceding paragraph is incorporated by reference herein.

43. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(1) requires the posting of signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside the work area.

44. The EPA inspection revealed that Respondent failed to any post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside the work area.

45. Respondent's failure to post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside the work area, is a violation of 40 C.F.R. § 745.85(a)(1) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 5

46. Each and every preceding paragraph is incorporated by reference herein.

47. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(2)(i)(B) requires a renovation firm, before beginning the renovation, to close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

48. The EPA inspection revealed that, during the renovation, duct openings in the work area were not closed or covered with taped-down plastic sheeting or some other impermeable material.

49. Respondent failed to close duct openings in the work area or cover them with taped-down plastic sheeting or some other impermeable material.

50. Respondent's failure to close duct openings in the work area or cover them with taped-down plastic sheeting or some other impermeable material is a violation of 40 C.F.R. § 745.85(a)(2)(i)(B) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 6

51. Each and every preceding paragraph is incorporated by reference herein.

52. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(2)(i)(C) requires a renovation firm to close windows and doors in the work area, cover doors with plastic sheeting or other impermeable material, and/or cover doors used as an entrance to the work with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

53. The EPA inspection revealed that windows and doors in and adjacent to the work area in the unit were open, and the doors were not covered with impermeable sheeting, allowing paint chips and other debris to migrate outside of the unit.

54. Respondent failed to close windows and doors in the work area, as well as cover doors with plastic sheeting or other impermeable material to confine dust and debris from the work area.

55. Respondent's failure to close all windows and doors in the work area and cover doors with plastic sheeting or other impermeable material is a violation of 40 C.F.R. § 745.85(a)(2)(i)(C) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 7

56. Each and every preceding paragraph is incorporated by reference herein.

57. 40 C.F.R. § 745.85(a)(2)(i)(D) requires a firm engaged in renovation activities to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or sufficient distance to contain the dust, whichever is greater, before beginning the renovation.

58. At the time of the EPA inspection, paint chips, dust, and debris were found scattered in the interior of the unit. Additionally, there was no plastic sheeting or covering on the floor surface in the interior of the unit.

59. Respondent failed to cover the floors surfaces in the work area and six feet beyond with taped-down plastic sheeting or other impermeable material.

60. Respondent's failure to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or sufficient distance to contain the dust, whichever is greater, before beginning the renovation is a violation of 40 C.F.R. § 745.85(a)(2)(i)(D) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 8

61. Each and every preceding paragraph is incorporated by reference herein.

62. 40 C.F.R. § 745.85(a)(2)(ii)(C) requires a firm engaged in renovation activities, before beginning the renovation, to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering.

63. At the time of the EPA inspection, despite the ongoing renovation activities, there was no plastic sheeting or other disposable permeable material on the ground at the unit, and the property line did not prevent ground covering from extending 10 feet. Paint chips and renovation debris were scattered about the exterior of the property outside of the work area.

64. Respondent failed to cover the ground at the unit with plastic sheeting or other impermeable materials as required by 40 C.F.R. § 745.85(a)(2)(ii)(C).

65. Respondent's failure to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, before beginning the renovation, is a violation of 40 C.F.R. § 745.85(a)(2)(ii)(C) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 9

66. Each and every preceding paragraph is incorporated by reference herein.

67. Pursuant to 40 C.F.R. § 745.81(a)(4)(i), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(4)(i) requires the firm to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal and/or failure to cover a chute if it is used to remove waste from the work area.

68. At the time of the EPA inspection, paint chips, dust, and debris were found scattered throughout the unit, as well as on the ground surrounding the exterior of the unit,

outside of the scope of the work area.

69. Respondent failed to contain waste from its renovation activities to prevent releases of dust and debris.

70. Respondent's failure to contain waste from renovation activities is a violation of 40 C.F.R. § 745.85(a)(4)(i) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 10

71. Each and every preceding paragraph is incorporated by reference herein.

72. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(4)(ii) requires the firm act so that, at the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities is stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

73. At the time of the EPA inspection, paint chips, dust, and debris were found scattered on the ground surrounding the exterior of the unit, outside of the scope of the work area. According to Respondent, these materials had been there since the day before the inspection.

74. Respondent failed to act so that, at the conclusion of each work day, waste that has been collected from renovation activities is stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

75. Respondent's failure to contain waste from renovation activities at the conclusion of each work day is a violation of 40 C.F.R. § 745.85(a)(4)(ii) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Relief Requested

76. Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615, for violations of Section 409 of TSCA, 15 U.S.C. § 2689. Pursuant to Section 16 of TSCA, 15 U.S.C. 2615, and based upon the facts set forth above, it is proposed that a civil penalty be assessed against Respondent.

77. The proposed penalty is based upon the facts alleged in this Complaint and upon the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), including the nature, circumstances, extent, and gravity of the violations, and, with respect to Respondent, the company's ability to pay, the effect on its ability to continue to do business, any history of prior

such violations, the degree of culpability, and such other matters as justice may require.

78. In order to assess a penalty for the violations alleged in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to the EPA's August 2010 Interim Final Policy entitled "Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule" (the "LBP Consolidated ERPP"), a copy of which is enclosed with this Complaint. The LBP Consolidated ERPP provides a rational, consistent, and equitable calculation methodology for applying to particular cases the statutory penalty factors enumerated above.

79. Complainant proposes that Respondent be assessed a civil penalty in the amount of **Fifty-Four Thousand Eight Hundred Thirty-Two Dollars (\$54,832)** for the TSCA violations alleged in this Complaint. Attachment 1 to this Complaint provides documentation of Complainant's basis for the civil penalty proposed in this Complaint.

80. Complainant's civil penalty request is based on the best information available to the EPA at the time of this Complaint's issuance. The proposed penalty may be adjusted in the EPA's discretion if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate civil penalty amount.

Payment of Proposed Penalty in Full

81. Respondent may resolve this proceeding at any time by paying the full penalty proposed in the Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk. Payment of the total penalty of Fifty-Four Thousand Eight Hundred Thirty-Two Dollars (\$54,832) may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000.

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

A copy of the check or other payment must simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

Payment should reference the name and docket number of this Complaint.

Payment of Proposed Penalty in Lieu of an Answer

82. Respondent may resolve this proceeding by paying the proposed penalty in full instead of filing an answer to the Complaint within thirty (30) days of receipt of the Complaint, in accordance with the procedures set forth in Rule 22 of the Consolidated Rules of Practice. If Respondent wishes to resolve this proceeding by paying the proposed penalty in full instead of filing an answer but needs additional time to pay the penalty, Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint, in accordance with Rule 22.18(a)(2) of the Consolidated Rules of Practice. The written statement shall state that Respondent agrees to pay the proposed penalty in full within sixty (60) days of receipt of the Complaint. The written statement need not contain any response to, or admission of, the allegations in the Complaint. Respondent must then pay the full amount of the proposed penalty within sixty (60) days of receipt of the Complaint. Failure to pay the full penalty within sixty (60) days of receipt of the Complaint may subject Respondent to default, as set forth below.

NOTICE OF OPPORTUNITY FOR HEARING

Answer and Request for Hearing

83. Respondent must file a written answer within thirty (30) days of receipt of this Complaint if Respondent: a) contests any material fact upon which this Complaint is based; b) contends that the penalty proposed in this Complaint is inappropriate; or c) contends that it is entitled to judgment as a matter of law. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which a Respondent has any knowledge. Where a Respondent has no knowledge of a particular factual allegation, the answer shall so state. Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes an admission of the allegation. The answer shall also state: d) the circumstances or arguments which are alleged to constitute the grounds of any defense; e) the facts that Respondent disputes; f) the basis for opposing the proposed penalty;

and g) whether a hearing is requested.

84. The original and one copy of the answer shall be filed with the following, in accordance with Section 22.15 of the Consolidated Rules:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

A copy of the answer shall be sent to:

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

85. After the filing of Respondent's Answer to the Complaint, the Hearing Clerk at the EPA Headquarters will serve as the Regional Hearing Clerk, and all further filings in this matter (except for the filing of a Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.18(b)(3)) must be filed with the Hearing Clerk at the following addresses, as appropriate:

If using the US Postal Service:

Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mailcode 1900R
1200 Pennsylvania Avenue NW
Washington, DC 20460

If using UPS/FedEx/DHL:

Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Avenue NW
Washington, DC 20460

Default

86. If, within thirty (30) days of receipt of a Complaint, Respondent fails to:
(a) submit full payment of the proposed penalty; (b) submit a written statement to the Regional Hearing Clerk that Respondent agrees to pay the penalty within sixty (60) days of receipt of the Complaint; or (c) file a written answer to the Complaint, Respondent may be found in default. Default by Respondent constitutes, for the purposes of this proceeding, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalty proposed in the Complaint shall be assessed unless the Presiding Officer finds that the proposed penalty is clearly inconsistent with the record of the proceeding or TSCA.

Informal Settlement Conference

87. The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of TSCA and the regulations upon which this action is based. Regardless of whether a Respondent requests a hearing, a Respondent may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request an informal settlement conference, please contact:

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Office: (913) 551-7501

88. Any settlement which may be reached as a result of such a conference shall be recorded in a written consent agreement signed by all parties or their representatives and shall conform with the provisions of Section 22.18(b)(2) of the Consolidated Rules of Practice. No settlement or consent agreement shall dispose of this proceeding without a final order from the Regional Judicial Officer or the Regional Administrator.

89. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer must be filed.

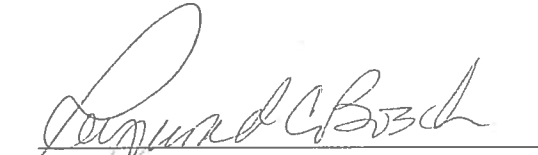
**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 12/13/18



Jamie Green
Chief
Toxics and Pesticides Branch
Water, Wetlands, and Pesticides Division

Date: Dec 13, 2018



Raymond C. Bosch, Attorney
Office of Regional Counsel

CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct electronic copy of the foregoing Complaint and Notice of Opportunity for Hearing were hand-delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219, on December 24 2018.

A true and correct copy of the foregoing Complaint and Notice of Opportunity for Hearing, together with a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, and the EPA's "Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule" were sent by certified mail, return receipt requested, on the 24 of December, 2018 to:

Mr. Barrera Bautista
Bautista Painting
4115 Strong Avenue
Kansas City, Kansas 66106

