

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

2016 AUG 16 AM 8:17

BEFORE THE ADMINISTRATOR

In the matter of)
)
SUPERIOR RESTORATION)
& CONSTRUCTION LLC,)
)
Respondent.)
_____)

Docket. No. TSCA-07-2016-0017

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 “Agency”), has reason to believe that Superior Restoration & Construction LLC (“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 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 (“Consolidated Rules of Practice”), a copy of which is enclosed with this Complaint.

Parties

2. Complainant, by delegation from the Administrator of the EPA, is the Chief of the Toxics and Pesticides Branch in the Water, Wetlands and Pesticides Division, EPA, Region 7.

3. Respondent Superior Restoration & Construction LLC is a limited liability company operating under the laws of the state of Kansas.

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 to 2692.

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

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 (“Renovation, Repair, and Painting Rule”). See *Lead; Renovation, Repair, and Painting Program*, 73 Fed. Reg. 21692, 21758 (Mar. 31, 2008).

7. The Renovation, Repair, and Painting Rule establishes work practice standards for renovations that disturb lead-based 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. The regulation at 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.

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

11. The regulation at 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. The regulation at 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. 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. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail to comply with, *inter alia*, any provision of 40 C.F.R. Part 745, Subpart E.

14. The regulation at 40 C.F.R. § 745.87(d) provides that violators may be subject to civil sanctions pursuant to Section 16 of TSCA, 15 U.S.C. § 2615. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides that any person who violates Section 409 of TSCA, 15 U.S.C. § 2689, shall be liable to the United States for a civil penalty of up to \$25,000 for each such violation. Each day that such a violation continues constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. § 2689. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, 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 \$37,500 for violations that occur after January 12, 2009.

General Factual Allegations

15. On or about September 17, 2015, and pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the EPA conducted an inspection at 3415 Charlotte Street in Kansas City, Missouri (“the Property”), to evaluate Respondent’s compliance with TSCA and the requirements of the Renovation, Repair, and Painting Rule (“EPA inspection”). A copy of the inspection report was mailed to Respondent on September 29, 2015.

16. Respondent is, and at all times referred to herein was, a limited liability company operating under the laws of the state of Kansas.

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

18. At the time of the EPA inspection and at all times relevant to this Complaint, Respondent was engaged in a “renovation” of the Property as defined by 40 C.F.R. § 745.83.

The EPA inspection revealed that renovations commenced at the Property on or about September 10, 2015, and included removal of an 8-by-7 foot wall and the replacement of 13 windows.

19. At all times relevant to this Complaint, Respondent's renovation was a "renovation for compensation" per 40 C.F.R. § 745.82(a). At the time of the EPA inspection, a private party owned the Property and hired Respondent to perform the renovations described in paragraph 18.

20. At all times relevant to this Complaint, the Property was "target housing" as defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17). The EPA inspection and subsequent investigation revealed that the Property was built in 1904.

21. At all times relevant to this Complaint, the Property was unoccupied. Children less than six years of age neither occupied nor were present at the Property at the time of Respondent's renovation and the EPA inspection.

22. As a result of the EPA inspection and additional information obtained by the Agency, Complainant has determined that violations of the Renovation, Repair, and Painting Rule and Section 409 of TSCA, 15 U.S.C. § 2689, occurred as a result of Respondent's renovation activities at the Property.

Alleged Violations

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

Count 1

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

25. 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 EPA for certification to perform renovations or dust sampling.

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

27. 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 on the Property is a violation of 40 C.F.R. § 745.81(a)(2)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 2

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

29. Pursuant to 40 C.F.R. § 745.84(a)(1), firms performing renovation activities in any residential dwelling unit of target housing must provide the owner of the unit with the EPA pamphlet entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* ("EPA Pamphlet") no more than 60 days before beginning the renovation.

30. The EPA inspection revealed that Respondent did not provide the owner of the Property with the EPA Pamphlet before beginning renovation activities on the Property.

31. Respondent's failure to provide the owner of the Property with the EPA Pamphlet 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 3

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

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

34. The EPA inspection revealed that Respondent did not assign a certified renovator to the renovation performed on the Property.

35. Respondent's failure to ensure that a certified renovator was assigned to the renovation that the firm performed on the Property 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 4

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

37. 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 firms to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area.

38. The EPA inspection revealed that Respondent failed to post protective signs as required by 40 C.F.R. § 745.85(a)(1). Photographs obtained by the EPA inspector show that caution tape and warning signs were not posted around the yard, front porch, or interior living spaces of the Property where renovation and waste-collection activities were occurring.

39. Respondent's failure to post signs clearly defining the work area and warning occupants and other persons not involved in renovation to remain outside of 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

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

41. 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)(A) requires firms to remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

42. The EPA inspection revealed that Respondent did not remove objects from the work area. Photographs obtained by the EPA inspector show drinking glasses, pots and pans, a microwave, window blinds, and other household items present and uncovered in the kitchen where renovation activities were ongoing. Additionally, the EPA inspection revealed that where Respondent had covered with plastic sheeting certain objects left on kitchen cabinets and countertops, the edges of such plastic sheeting were not sealed to the floor.

43. Respondent's failure to remove all objects from the work area or cover them with sealed plastic sheeting or other impermeable material is a violation of 40 C.F.R. § 745.85(a)(2)(i)(A) 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

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

45. 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 firms to close windows and doors in the work area and cover doors with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered 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.

46. The EPA inspection revealed that Respondent did not cover doors with plastic sheeting or other impermeable material. Photographs obtained by the EPA inspector show building supplies and renovation waste on and around the front porch of the Property. Such photographs also show that the front porch entry door to the Property is not covered with plastic sheeting or other impermeable material.

47. Respondent's failure to cover all doors in the work area 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

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

49. 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)(D) requires firms to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

50. The EPA inspection revealed that Respondent did not cover the floor surface in the work area with taped-down plastic sheeting or other impermeable material. Photographs obtained by the EPA inspector show that the kitchen and adjoining dining room floors were not covered where renovation activities were ongoing.

51. Respondent's failure to cover the floor surface in the work area with taped-down plastic sheeting or other impermeable material 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

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

53. 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)(i) requires firms 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.

54. The EPA inspection revealed that Respondent did not contain waste from renovation activities at the Property before the waste was removed from the work area for storage or disposal. Photographs obtained by the EPA inspector show a large pile of construction and renovation waste on the front lawn of the Property. Additionally, windows removed from the Property were lined up against a tree in the yard. The inspection photographs show dust and debris on the lawn and sidewalk leading to the front porch of the Property.

55. Respondent's failure to contain waste from renovation activities in order to prevent releases of dust and debris before the waste was removed from the work area for storage or disposal 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 9

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

57. 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 firms, at the conclusion of each work day and at the conclusion of the renovation, to ensure that 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.

58. The EPA inspection revealed that Respondent did not ensure that waste collected from renovation activities was stored under containment at the conclusion of each work day. Photographs obtained by the EPA inspector show a large pile of construction and renovation waste on the front lawn of the Property, as well as old windows lined up against a tree. The EPA inspection revealed that the renovations commenced on September 10, 2015, and at the time of the EPA inspection on September 17, 2015, Respondent was engaged in finishing work on the interior of the Property.

59. Respondent's failure to ensure that waste collected from renovation activities was stored under containment 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

60. 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.

61. 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.

62. 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.

63. Complainant proposes that Respondent be assessed a civil penalty in the amount of Forty-Four Thousand Six-Hundred and Eighty Dollars (\$44,680) 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.

64. 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

65. 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 civil penalty of Forty-Four Thousand Six-Hundred and Eighty Dollars (\$44,680) may be made by certified or cashier's check made payable to "Treasurer, United States of America," and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. 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:

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

and to:

Jared Pessetto
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

66. 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 above. 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)(1) 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

67. 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 Respondent has any knowledge. Where 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.

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

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:

Jared Pessetto
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

69. After the filing of Respondent's Answer to the Complaint, the Hearing Clerk at 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 U.S. Postal Service:

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

Default

70. 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

71. 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 Respondent requests a hearing, 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:

Jared Pessetto
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Office: (913) 551-7793

72. 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.

73. 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: 8/15/2016



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

Date: 7/26/2016



Jared Passetto
Assistant Regional Counsel
Office of Regional Counsel

Address of Target Housing	Year Built	Children (ages)	Date of Contract	Date Work Performed	Deviations/Deficiencies
3415 Charlotte Street, Kansas City, Missouri 64109	1904	None	Unknown	9/10/2015-9/17/2015	Failure to comply with Subpart E—Residential Property Renovation

Violation	Extent	Circumstance	Gravity Based Penalty	Micro-Business Penalty (\$100,001-\$300,000)	Micro-business Penalty (\$100,000 or Less)
1. 40 C.F.R. §§ 745.81(a)(2)(ii) & 745.89(a)(1)—Failure to obtain initial firm certification from EPA.	Minor* *See ERPP, p. A-3, n. 49	Level 3a	4,500	600	450
2. 40 C.F.R. § 745.84(a)(1)—Failure to provide property owner with the EPA-approved lead hazard information pamphlet.	Minor	Level 1b	2,840	380	280
3. 40 C.F.R. § 745.89(d)(2)—Failure to assign a certified renovator.	Minor	Level 3a	4,500	600	450
4. 40 C.F.R. § 745.85(a)(1)—Failure to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area; to prepare, to the extent practicable, signs in the primary language of the occupants; and/or to post signs before beginning the renovation and makes sure they remain in place and readable until post-renovation cleaning verification have been completed.	Minor	Level 1b	2,840	380	280
5. 40 C.F.R. § 745.85(a)(2)(i)(A)—Failure to remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.	Minor	Level 2a	6,000	800	600
6. 40 C.F.R. § 745.85(a)(2)(i)(C)—Failure to close windows and doors in the work area and cover doors with plastic sheeting or other impermeable material; doors used as an entrance to the work area must be covered 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.	Minor	Level 2a	6,000	800	600
7. 40 C.F.R. § 745.85(a)(2)(i)(D)—Failure to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.	Minor	Level 2a	6,000	800	600


Violation	Extent	Circumstance	Gravity Based Penalty	Micro-Business Penalty (\$100,001-\$300,000)	Micro-business Penalty (\$100,000 or Less)	
8.	40 C.F.R. § 745.85(a)(4)(i)—Failure to contain waste from renovation activities to prevent releases of dust and debris before waste is removed from the work area for storage or disposal and/or failure to cover chute if it is used to remove waste from the work area.	Minor	Level 2a	6,000	800	600
9.	40 C.F.R. § 745.85(a)(4)(ii)—Failure, at the conclusion of each work day and at the conclusion of the renovation, to ensure that 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.	Minor	Level 2a	6,000	800	600
TOTAL				\$44,680	\$5,960	\$4,460

CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct 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 August 16, 2016.

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 August 16, 2016, to:

Cory Poulsen
Superior Restoration & Construction LLC
7861 Mastin Drive
Overland Park, Kansas 66204.



Jared Pessetto
Assistant Regional Counsel
Office of Regional Counsel