



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP 29 2011

REPLY TO THE ATTENTION OF:  
L-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0189 4359

Mr. Chad Gose  
Gose Painting  
627 Dickey Avenue  
Greenfield, Ohio 45123

Re: In the Matter of Gose Painting, Docket No: **TSCA-05-2011-0022**

Dear Mr. Gose:

I have enclosed a complaint filed by the U.S. Environmental Protection Agency, Region 5 against Gose Painting under Sections 402(c) and 406(b) of Title IV of the Toxic Substances Control Act, as promulgated under 15 United States Code § 2682, § 2686, and § 2687. The complaint alleges violations of the Residential Property Renovation Rule.

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. To request a conference, or if you have any questions about this matter, you may contact Sherry L. Estes, Associate Regional Counsel at (312) 886-7164.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret M. Guerriero".

Margaret M. Guerriero  
Director  
Land and Chemicals Division

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. TSCA-05-2011-0022</b>
	)	
<b>Gose Painting</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Greenfield, Ohio</b>	)	<b>Under Section 16(a) of the Toxic Substances</b>
	)	<b>Control Act, 15 U.S.C. § 2615(a)</b>
	)	
<b>Respondent</b>	)	
<hr/>		

**RECEIVED**  
SEP 29 2011

**Complaint**

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

1. This is an administrative proceeding to assess a civil penalty under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Gose Painting (Respondent), with a place of business located at 627 Dickey Avenue, Greenfield, Ohio 45123.

**Statutory and Regulatory Background**

4. In promulgating the Residential Lead-Based Paint Hazard Reduction Act of 1992, at 42 U.S.C. § 4851 *et seq.*, Congress found, among other things, that low-level lead poisoning is widespread among American children, afflicting as many as 3,000,000 children under the age of six; at low levels, lead poisoning in children causes intelligence deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems; and the ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. A key component of the national strategy to reduce and eliminate the threat of childhood lead poisoning is to educate

the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

5. Section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 amended TSCA, 15 U.S.C. § 2601 et. seq., by adding Title IV – Lead Exposure Reduction.

6. Section 402(c) of TSCA, 15 U.S.C. § 2682, required the Administrator of EPA to promulgate regulations for the certification of individuals engaged in renovation or remodeling activities in target housing, public buildings built before 1978, and commercial buildings and for standards in conducting those renovation and remodeling activities.

7. Section 407 of TSCA, 15 U.S.C. § 2687 required that the regulations promulgated by the Administrator include such recordkeeping and reporting requirements as may be necessary to insure the effective implementation of TSCA Subchapter IV (TSCA §§ 2681-2692).

8. On June 1, 1998, EPA promulgated information distribution and recordkeeping requirements in regulations codified at 40 C.F.R. Part 745, Subpart E, Requirements for Hazard Education Before Renovation of Target Housing (Pre-Renovation Education Rule or PRE Rule) pursuant to 15 U.S.C. § 2686.

9. On April 22, 2008, EPA amended and recodified the PRE Rule information distribution and recordkeeping requirements and promulgated additional regulations at 40 C.F.R. Part 745, Subpart E, Lead; Renovation, Repair, and Painting Program; Lead Hazard Information Pamphlet (RRP Rule) pursuant to 15 U.S.C. §§ 2682, 2686, and 2687.

10. Under 40 C.F.R. Part 745, Subpart E, firms that perform, offer, or claim to perform renovations of target housing or a child-occupied facility must be certified by EPA.

11. Under 40 C.F.R. Part 745, Subpart E, each person who performs for compensation, a renovation of target housing or a child-occupied facility must be trained and certified by an

EPA accredited training provider to conduct renovation, remodeling and/or painting activities in target housing and/or child-occupied facilities; must be employed by an EPA-certified renovation firm and must comply with the specified work practice and recordkeeping requirements of the RRP Rule by April 22, 2008. Each person who performs for compensation, a renovation of target housing or a child-occupied facility must also provide a lead hazard information pamphlet to the owner and occupant of such housing or child-occupied facility prior to commencing the renovation and must comply with the PRE Rule by June 1, 1999, codified at 40 C.F.R. § 745.85, and with the amended information distribution requirements of the RRP Rule, recodified at 40 C.F.R. § 745.84, by April 22, 2008.

12. 40 C.F.R. § 745.103 defines *common area* to mean a portion of a building that is generally accessible to all residents/users. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

13. 40 C.F.R. § 745.83 defines *firm* to mean 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.

14. 40 C.F.R. § 745.83 defines *minor repair and maintenance activities* to mean activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by 40 C.F.R. § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas.

15. 40 C.F.R. § 745.83 defines *renovation* to mean 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 this part (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, planning thresholds to install weather stripping), and interim controls that disturb painted surfaces.

16. 40 C.F.R. § 745.83 defines *renovator* to mean an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.

17. 40 C.F.R. § 745.103 defines *residential dwelling* to mean a single family dwelling, including attached structures such as porches and stoops; or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

18. 40 C.F.R. § 745.103 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.

19. 40 C.F.R. § 745.85(a) requires that renovations must be performed by certified

firms, in accordance with 40 C.F.R. § 745.89, using certified renovators in accordance with 40 C.F.R. § 745.90.

20. 40 C.F.R. § 745.86(a) requires that the firm performing the renovation must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart for a period of 3 years following completion of the renovation.

21. Failure to comply with any provision of 40 C.F.R. Part 745, Subpart E, of the Lead Renovation, Repair and Painting Program (RRP Rule) violates Section of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative penalties under Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

22. Section 16(a) of TSCA, 42 U.S.C. § 2615, and 40 C.F.R. § 745.87(d), authorize the EPA Administrator to assess a civil penalty of up to \$25,000 for each violation of Section 409 of TSCA. Each day that such a violation continues constitutes a separate violation of Section 15 of TSCA, 15 U.S.C. § 2614. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred after January 12, 2009.

### **General Allegations**

23. Complainant incorporates paragraphs 1 through 22 of this Complaint as if set forth in this paragraph.

24. On July 20, 2010, EPA received a complaint concerning Respondent's failure to comply with the RRP rule at 916 North High Street, Hillsboro, Ohio (Property).

25. On or about June 7, 2010, Respondent scraped and power washed approximately 2,490 ft<sup>2</sup> of the painted exterior of the Property in preparation for repainting.

26. At the time the work described in paragraph 25, above, was conducted, a child

under six years of age resided at the Property.

27. On November 9, 2010, Complainant sent Chad Gose a certified letter requesting information concerning Respondents' work at the Property and information concerning certification as a renovator and firm as required by the RRP rule.

28. On November 12, 2010, Mr. Gose received the information response letter referenced in paragraph 27, above. Mr. Gose did not reply to the information request letter.

29. Based on information and belief, the Property was constructed in 1926, making the Property target housing as defined in 40 C.F.R. § 745.103.

30. The power-washing and scraping of the Property's exterior surface, as described in paragraph 25, above is renovation as defined in 40 C.F.R. § 745.103.

31. Respondent is a renovator as defined in 40 C.F.R. § 745.83, since it conducted the work described in paragraph 25, above for compensation.

32. On August 4, 2011, EPA advised Respondent by letter that EPA was planning to file a civil administrative complaint against Respondent for specific alleged violations of the PRE Rule and that the complaint would seek a civil penalty. EPA asked Respondent to identify any factors Respondent thought EPA should consider before issuing the complaint. If Respondent believed there were financial factors which bore on Respondent's ability to pay a civil penalty, EPA asked Respondent to submit specific financial documents.

33. On August 6, 2011, Respondent received the pre-filing notice letter referred to in paragraph 32, above. Respondent did not reply to the letter.

34. Based on information and belief, Respondent has an ability to pay the proposed penalty of \$64,000.

**Count 1**

35. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

36. 40 C.F.R. § 745.81(a)(2)(ii) requires that on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under 40 C.F.R. § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a) or (c).

37. Respondent was not certified as a firm, under 40 C.F.R. § 745.89 at the time the June 7, 2010 renovation described in paragraph 25, above, was conducted at the Property and did not qualify for an exemption under 40 C.F.R. § 745.82(a) or (c).

38. Respondent's failure to be certified as a firm, under 40 C.F.R. § 745.89, before performing the renovation referred to in paragraph 25, above, constitutes a violation of 40 C.F.R. § 745.81(a)(2)(ii), as promulgated under 15 U.S.C. § 2682.

**Count 2**

39. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

40. 40 C.F.R. § 745.81(a)(3) requires that on or after April 22, 2010, all renovations in target housing or child-occupied facilities must be directed by renovators certified in accordance with 40 C.F.R. § 745.90(a) and performed by certified renovators or individuals trained in accordance with 40 C.F.R. § 745.90(b)(2), unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a) or (c).

41. Respondent was not certified as a renovator, under 40 C.F.R. § 745.90, at the time the June 7, 2010 renovation described in paragraph 25, above, was conducted at the Property and



did not qualify for an exemption under 40 C.F.R. § 745.82(a) or (c).

42. Respondent's failure to be certified as a renovator, under 40 C.F.R. § 745.90, before performing the renovation referred to in paragraph 25, above, constitutes a violation of 40 C.F.R. § 745.81(a)(3), as promulgated under 15 U.S.C. § 2682.

### **Count 3**

43. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

44. 40 C.F.R. § 745.84(a)(1) requires that the firm performing renovation in dwelling units must provide the owner of the residential dwelling unit of target housing with the pamphlet and obtain from the owner, a written acknowledgement that the owner has received the pamphlet or obtain a certificate of mailing at least 7 days prior to the renovation.

45. Respondent failed to provide the owner of the residential dwelling unit of target housing with the pamphlet and obtain from the owner, a written acknowledgement that the owner has received the pamphlet or obtain a certificate of mailing at least 7 days prior to the June 7, 2010 renovation described in paragraph 25, above, was conducted at the property.

45. Respondent's failure to provide the owner of the residential dwelling unit of target housing with the pamphlet and obtain from the owner, a written acknowledgement that the owner has received the pamphlet or obtain a certificate of mailing at least 7 days prior to the renovations referred to in paragraph 25, above, constitutes a violation of 40 C.F.R. § 745.84(a)(1), as promulgated under 15 U.S.C. § 2686.

### **Count 4**

46. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

47. 40 C.F.R. § 745.86(a) requires that the firm performing the renovation must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this 40 C.F.R. Part 745, Subpart E for a period of 3 years following completion of the renovation including documentation of receipt of a pamphlet, as required by 40 C.F.R. § 45.84(a)(1), and documentation of compliance with the work practice standards requirements of 40 C.F.R. § 745.85, as required by 40 C.F.R. § 745.86(b)(7).

48. Respondent failed to retain and make available records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of 3 years following completion of the June 7, 2010 renovation described in paragraph 25, above, was conducted at the Property, including failure to make available records documenting receipt of a pamphlet, as required by 40 C.F.R. § 45.86(a), and documentation compliance with the work practice standards requirements of 40 C.F.R. § 745.85, as required by 40 C.F.R. § 745.86(b)(7).

49. Respondent's failure to retain and make available records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E for a period of 3 years following completion of the renovation referred to in paragraph 25, above, constitutes a violation of 40 C.F.R. § 745.86(a), as promulgated under 15 U.S.C. § 2686 and § 2687.

**Proposed Civil Penalty**

50. Complainant proposes that the Administrator assess a civil penalty against Respondent for the violations alleged in this Complaint as follows:

**Count 1**

40 C.F.R. § 745.81(a)(2)(ii).....\$22,500

**Count 2**

40 C.F.R. § 745.81(a)(3).....\$22,500

**Count 3**

40 C.F.R. § 745.84(a)(1).....\$16,000

**Count 4**

40 C.F.R. § 745.86(a) .....\$3,000

**Total Proposed Civil Penalty .....\$64,000**

In determining the amount of any civil penalty, Section 16 of TSCA requires EPA to take into account the nature, circumstances, extent and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

EPA calculates penalties by applying its *Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* dated August 19, 2010 (Response Policy). This Response Policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors to particular cases. As discussed in the Response Policy, the greater the deviation from the regulations, the greater the likelihood that people will be uninformed about the hazards associated with lead-based paint and any renovations, that exposures will be inadequately controlled during renovations, or that residual hazards and exposures will persist after the renovation/abatement work is completed. Factors relevant to assessing an appropriate penalty include whether the violations have a high probability of impacting human health and the environment, information pertaining to a Respondent's ability to pay a penalty, any history of prior violations, and any evidence that Respondent has taken steps to discover the presence of and/or has taken steps to abate lead-based paint and its hazards in

subject housing.

As stated in paragraph 32, above, by letter dated August 4, 2011, EPA advised Respondent that EPA was planning to file a civil administrative complaint against Respondent for alleged violations of Section 402(c) and 406(b) of TSCA, and that Section 16 of TSCA authorizes the assessment of a civil administrative penalty. EPA asked Respondent to identify any factors Respondent thought EPA should consider before issuing the complaint, and if Respondent believed there were financial factors which bore on Respondent's ability to pay a civil penalty, EPA asked Respondent to submit specific financial documents.

Respondent did not claim an inability to pay a penalty and has provided no facts or information which would indicate that the penalty should be adjusted for financial or other factors related to the alleged violation.

#### **Rules Governing This Proceeding**

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the Complaint is a copy of the Consolidated Rules.

#### **Filing and Service of Documents**

Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends to include as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Sherry L. Estes to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Estes at (312) 886-7164. Her address is:

Sherry L. Estes (C-14J)  
Associate Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

**Penalty Payment**

Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, United States of America" and by delivering the check to:

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

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Ms. Estes and to:

Pamela Grace (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

### **Answer and Opportunity to Request a Hearing**

If Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted according to the Consolidated Rules.

In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified above.

Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation. Respondent's answer must also state:

- a. The circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. The facts that Respondent disputes;
- c. The basis for opposing the proposed penalty; and
- d. Whether Respondent requests a hearing.

If Respondent does not file a written answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.

### **Settlement Conference**

Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Ms. Estes at the address provided above.

Respondent's request for an informal settlement conference does not extend the 30-calendar-day period for filing a written Answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. The Complainant encourages all parties facing civil penalties to pursue settlement through an informal conference. The Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

### **Continuing Obligation to Comply**

Respondent's payment of the civil penalty will not satisfy Respondent's legal obligation to comply with TSCA and any other applicable federal, state, or local law.

**Consent Agreement and Final Order**

EPA has authority, where appropriate, to modify the amount of the proposed penalty to reflect any settlement reached with Respondent in an informal conference. The terms of the settlement would be embodied in a Consent Agreement and Final Order. A Consent Agreement signed by both parties is binding when the Regional Administrator signs the Final Order and it is filed with the Regional Hearing Clerk.

9/29/11

Date



Margaret M. Guerriero  
Director  
Land and Chemicals Division

**TSCA-05-2011-0022**

**RECEIVED**  
SEP 29 2011

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**




**CERTIFICATE OF SERVICE**

This is to certify that the original and one copy of this Complaint involving Chad Gose of Gose Painting, was filed on September 29, 2011, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No. 7001 0320 0006 0189 4359, along with a copy each of the "Consolidated Rules of Practice, 40 C.F.R. Part 22," and "Consolidated Enforcement Response and Penalty Policy (ERPP)" to:

Mr. Chad Gose  
Gose Painting  
627 Dickey Avenue  
Greenfield, Ohio 45123

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Sherry L. Estes, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD

  
Frederick Brown, PTCS (LC-8J)  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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