

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

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In the Matter of:)	
)	
Tim Galvez dba Tim’s Decks and Odd Jobs)	
675 Forest Ave.)	Docket No.
Portland, ME 04103)	TSCA-01-2020-0009
)	
Respondent)	
)	
)	
)	
Proceeding under Section 16(a) of the)	
Toxic Substances Control Act,)	
15 U.S.C. § 2615(a))	
_____)	

MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT ORDER

The Complainant, the United States Environmental Protection Agency (“EPA”), has moved for the issuance of an order finding that Respondent, Tim Galvez dba Tim’s Decks and Odd Jobs (“Respondent”), is in default in this matter, and finding that Respondent violated Section 409 of the Toxic Substances Control Act, 15 U.S.C. § 2689 (“TSCA”), and the federal regulations promulgated thereunder, set forth at 40 C.F.R. Part 745, Subpart E (the “Renovation, Repair and Painting Rule” or “RRP Rule”), and assessing a penalty of \$972.

I. Respondent Should Be Found in Default

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 (“Part 22”) provides that a party may be found to be in default after motion, upon failure to file a timely answer to the complaint. 40 C.F.R. § 22.17.

EPA filed the Complaint in this action on October 31, 2019. In the Complaint, EPA

alleged that Respondent violated federally enforceable provisions of TSCA Section 409 and the RRP Rule, and that Respondent is therefore subject to penalties under TSCA Section 16, 15 U.S.C. § 2689. A copy of the Complaint is attached as Exhibit 1.

EPA served on Respondent a copy of the Complaint and of the Part 22 rules by certified mail, return receipt requested. See 40 C.F.R. § 22.5(b)(1) & (b)(1)(ii)(A). EPA did not receive a signed return receipt from Respondent. However, the United States Postal Service's tracking information on its internet site verified that the certified package containing the Complaint was delivered "to an individual at the address" at 11:09 a.m. on November 2, 2019. A copy of the Certified Mail Receipt and the USPS Tracking Result is attached as Exhibit 2. Accordingly, service was complete on November 2, 2019. A copy of proof of service, filed with the Regional Hearing Clerk on October 31, 2019, is attached as Exhibit 1 (following the Complaint). See 40 C.F.R. § 22.7(c).

Respondent has not filed an answer, and the 30-day period for filing an answer has lapsed. See 40 C.F.R. § 22.15(a). Because Respondent has not filed a timely answer to the Complaint, Respondent should be found in default. Such default constitutes an admission of all facts alleged in the Complaint and a waiver of any rights to contest the factual allegations of the Complaint. 40 C.F.R. § 22.17(a).

II. Respondent's Action Violated TSCA

The following legal and factual grounds, as required by 40 C.F.R. § 22.17(b), support a finding that the Complaint establishes a prima facie case that Respondent violated TSCA Section 409 and the RRP Rule.

In 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act ("Act") in response to findings that low-level lead poisoning is widespread among American

children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint, and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. One of the stated purposes of the Act is to ensure that the existence of lead-based paint hazards is taken into account during the renovation of homes and apartments. To carry out this purpose, the Act added a new title to TSCA entitled “Title IV-Lead Exposure Reduction,” which currently includes Sections 401-411 of TSCA, 15 U.S.C. §§ 2681-2692.

In 1996, EPA promulgated regulations to implement Section 402(a) of TSCA, 15 U.S.C. § 2682(a). These regulations are set forth at 40 C.F.R. Part 745, Subpart L. In 1998, EPA promulgated regulations to implement Section 406(b) of the Act. These regulations are set forth at 40 C.F.R. Part 745, Subpart E. In 2008, EPA promulgated regulations to implement Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), by amending 40 C.F.R. Part 745, Subparts E and L (the “RRP Rule” and the “Lead-Based Paint Activities Rule,” respectively).

Pursuant to 40 C.F.R. § 745.82, the regulations in 40 C.F.R. Part 745, Subpart E, apply to all renovations performed for compensation in “target housing.” As provided in 40 C.F.R. § 745.83, “renovation” means 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.” “Renovation” includes 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). Pursuant to Section 401(17) of TSCA, as amended, 15 U.S.C. § 2681(17), the housing stock addressed by the Act and the RRP Rule is “target housing,” defined as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or

any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing). See 40 C.F.R. § 745.103.

The RRP Rule sets forth procedures and requirements for, among other things, the accreditation of training programs, the certification of renovation firms and individual renovators, the work practice standards for renovation, repair and painting activities in target housing and child-occupied facilities, and the establishment and maintenance of records. The RRP Rule also requires that renovation firms and renovators provide the EPA-approved pamphlet, *Renovate Right*, to a lessee or adult occupant before renovation activities begin and obtain written verification that the pamphlet was provided. 40 C.F.R. §§ 745.81(a)(2), 745.84(a)(2), 745.89(d)(1)-(2), and 745.86(a) and (b).

Respondent is an individual and the sole principal and owner of his residential repair, renovation, and painting business which he conducts in and around the Portland, Maine area, including Lewiston, Maine. (Complaint, paragraphs 19 and 20.) Respondent's business address is 675 Forest Ave., Portland, Maine. (Complaint, paragraph 22.) In August of 2018, Respondent was hired to perform renovations, including painting and painting-related activities, at the residential building located at 125 Pine St./81 Horton St. in Lewiston, Maine ("Subject Property"). (Complaint, paragraphs 25 and 34). At all times relevant to the Complaint, the Subject Property, constructed in 1891, was "target housing," as defined in Section 401(17) of TSCA and 40 C.F.R. § 745.103. (Complaint, paragraph 33.) At all times relevant to this Complaint, Respondent performed renovations of target housing, and was, thus, a "renovator" as defined at 40 C.F.R. § 746.83. (Complaint, paragraph 23.) At all times relevant to the RRP Rule violations alleged in this Complaint, Respondent was a "firm," as defined in 40 C.F.R. § 745.83. (Complaint, paragraph 21.) At all times relevant to this Complaint, Respondent was not certified

as an individual renovator, nor was his firm certified under the RRP Rule. (Complaint, paragraph 24.)

At all times relevant to this Complaint, Respondent subcontracted painting of the Subject Property to his father, Respondent's Subcontractor dba Ben's Painting ("Respondent's Subcontractor"). (Complaint, paragraph 26.) At all times relevant to this Complaint, Respondent's Subcontractor was a "firm," as defined in 40 C.F.R. § 745.83. (Complaint, paragraph 27.) At all times relevant to this Complaint, Respondent's Subcontractor performed renovations of target housing for compensation, and was, thus, a "renovator" as defined at 40 C.F.R. § 746.83. (Complaint, paragraph 28.) At all times relevant to this Complaint, Respondent's Subcontractor was not certified as a renovator under the RRP Rule, nor was his firm RRP Rule certified. (Complaint, paragraph 29.) At all times relevant to the RRP Rule violations alleged in this Complaint, Respondent's Subcontractor performed painting and painting-related activities at the Subject Property that constituted a "renovation" within the meaning of 40 C.F.R. § 745.83. (Complaint, paragraph 30.) The renovation activities performed by Respondent's Subcontractor at the Subject Property constituted a renovation for compensation within the meaning of TSCA Section 406(b) and the RRP Rule. (Complaint, paragraph 31.)

The work done by Respondent and Respondent's Subcontractor at the Subject Property came to the attention of EPA through a complaint of improper use of tarps during Respondent's renovation of the Subject Property, resulting in paint chips collecting on the bare ground. (Complaint, paragraph 36.)

On September 4, 2018, EPA representative ("Inspector") met with Respondent and Respondent's Subcontractor at the Maine Department of Environmental Protection office in

Portland, Maine, for the purpose of determining Respondent's compliance with the RRP Rule. (Complaint, paragraph 32). At the time of the renovation of the Subject Property, Respondent was not certified under the RRP rule. (Complaint, paragraph 40.) Further, at no time before or during the renovation of the Subject Property was the Respondent or anyone on the work crew performing the renovation activities either a certified renovator or trained by a certified renovator as required by 40 C.F.R. § 745.90, nor did Respondent assign a certified renovator to the renovation as required by 40 C.F.R. §§ 745.89(d)(1) and (d)(2). (Complaint, paragraph 46.)

During the EPA Inspection, Respondent admitted to the Inspector that he did not provide the *Renovate Right* pamphlet to the owner and adult occupants of the Subject Property. (Complaint, paragraphs 37 and 51.)

While renovating the exterior of the Subject Property, Respondent did not ensure that the ground was covered with impermeable material sufficient to collect falling paint debris, in compliance with 40 C.F.R. § 745.85(a)(2)(ii)(C), resulting in lead-based paint debris falling directly onto the ground around the perimeter of the Subject Property. (Complaint, paragraph 56.)

On October 31, 2019, EPA Region 1 issued to Respondent by Certified Mail - Return Receipt Requested, a "Complaint and Notice of Opportunity for Hearing" ("Complaint") alleging four counts of RRP Rule violations.

Respondent informed EPA counsel for this matter that he wished to settle the case through the "Quick Resolution" provision of the Complaint. (Complaint, paragraph 62.) When the penalty payment was not forthcoming, EPA counsel contacted Respondent by either telephone or email on the following dates:

- November 18, 2019
- November 26, 2019
- December 6, 2019
- January 6, 2020
- January 16, 2020
- January 23, 2020

Respondent repeatedly assured EPA counsel that the check was forthcoming, stating that he had mailed it on November 22, 2019, that it had been returned, and that he would be re-sending it. EPA counsel confirmed with the EPA Finance Office on July 7, 2020, that the penalty check has not been received.

Based on the above-described inspection and information, Complainant has identified the following violations of TSCA and the RRP Rule.

A. Count 1 – Performing, Offering, or Claiming to Perform a Renovation without EPA Certification for Firm

Pursuant to 40 C.F.R. § 745.89(a)(1), firms that perform renovations for compensation must apply for EPA certification to perform renovations. Under 40 C.F.R. § 745.81(a)(2)(ii), no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89(a)(1) in target housing unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82. (Complaint, paragraph 39.) At the time of the renovation at the Subject Property, Respondent was not a certified firm under the RRP Rule. (Complaint, paragraph 40.) In performing an exterior renovation without certification from EPA under § 745.89 at the Subject Property, Respondent violated 40 C.F.R. §§ 745.81(a)(2)(ii) and

745.89(a)(1). (Complaint, paragraph 41.) None of the exceptions identified in 40 C.F.R. § 745.82 applies to the renovation at the Subject Property. (Complaint, paragraph 42.) The violation alleged in this count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87(a), and a violation for which penalties may be assessed pursuant to Section 16 of TSCA. (Complaint, paragraph 43.)

B. Count 2 – Failure to Ensure a Certified Renovator Performs or Directs Work

Pursuant to 40 C.F.R. § 745.89(d)(1) and (2), firms performing renovations must ensure that (1) all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with § 745.90; and (2) a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90. (Complaint, paragraph 45.) At no time before or during the renovation of the Subject Property was the Respondent or anyone on the work crew performing the renovation activities either a certified renovator or trained by a certified renovator, as required by 40 C.F.R. § 745.90, nor did Respondent assign a certified renovator to the renovation, as required under 40 C.F.R. §§ 745.89(d)(1) and (d)(2). (Complaint, paragraph 46.) Respondent's failure to ensure that the individual performing renovation activities at the Subject Property was either a certified renovator or trained by a certified renovator and failure to ensure that a certified renovator was assigned to the Subject Property renovation constituted a violation of 40 C.F.R. §§ 745.89(d)(1) and (2) and Section 409 of TSCA. (Complaint, paragraph 47.) The violation alleged in this count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87(a), and a violation for which penalties may be assessed pursuant to Section 16 of TSCA. (Complaint, paragraph 48.)

C. Count 3 – Failure to Provide EPA-approved Lead Hazard Information Pamphlet (*Renovate Right*)

Pursuant to 40 C.F.R. § 745.84(a), no more than 60 days before beginning the renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must provide the owner of the residential unit with the EPA-approved *Renovate Right* pamphlet and obtain written acknowledgement of receipt of the pamphlet. Additionally, pursuant to 40 C.F.R. § 745.84(a)(2)(i) and (ii), if the owner does not occupy the dwelling unit, the firm performing the renovation must provide an adult occupant of the unit with the pamphlet and obtain from the adult occupant a written acknowledgment that the occupant received the pamphlet or certify in writing that the pamphlet was delivered to the dwelling and that the firm performing the renovation had been unsuccessful in obtaining a written acknowledgement from the adult occupant, or obtain a certificate of mailing at least seven days prior to the renovation. (Complaint, paragraph 50.) During the Inspection, Respondent admitted that he did not provide the *Renovate Right* pamphlet to the owner and adult occupants of the Subject Property. (Complaint, paragraph 51.) Respondent's failure to provide the *Renovate Right* pamphlet to the owner and adult occupants of the Subject Property is a violation of 40 C.F.R. § 745.84(a) and Section 409 of TSCA. (Complaint, paragraph 52.) The violation alleged in this count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87(a), and a violation for which penalties may be assessed pursuant to Section 16 of TSCA. (Complaint, paragraph 53.)

D. Count 4 – Failure to Contain the Work Area

Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovation performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), before beginning an exterior renovation, a firm must 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. (Complaint, paragraph 55.) While renovating the exterior of the Subject Property, Respondent did not ensure that the ground was covered with impermeable material sufficient to collect falling paint debris, in compliance with 40 C.F.R. § 745.85(a)(2)(ii)(C), resulting in lead-based paint debris falling directly onto the ground around the perimeter of the Subject Property. (Complaint, paragraph 56.) The failure of Respondent to ensure that the ground was covered at the Subject Property with impermeable material in compliance with 40 C.F.R. § 745.85(a)(2)(ii)(C), constitutes a violation of 40 C.F.R. § 745.89(d)(3), 40 C.F.R. § 745.85(a)(2)(ii)(C), and Section 409 of TSCA. (Complaint, paragraph 57.) The violation alleged in this count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87(a), and a violation for which penalties may be assessed pursuant to Section 16 of TSCA. (Complaint, paragraph 58.)

III. A Penalty of \$972 Should Be Assessed

Complainant recommends the imposition of a \$972 civil penalty, as proposed in the Complaint. The following legal and factual grounds, as required by 40 C.F.R. § 22.17(b), support a finding that the proposed penalty amount is appropriate in light of the penalty assessment criteria of TSCA Section 16, 15 U.S.C. § 2615, as applied to the circumstances of this case.

Section 16 of TSCA authorizes the assessment of a civil penalty of up to \$37,500 for each violation of Section 409 of TSCA, as adjusted up to \$40,576 by the Debt Collection Improvement Act, 40 C.F.R. Part 19 and the Federal Civil Penalties Inflation Adjustment Act of 2015, 28 U.S.C. § 2461. At the time the Complaint in this matter was issued, the maximum penalty for a violation of Section 409 of TSCA was \$39,873.

Section 16 of TCSA requires Complainant to consider the nature, circumstances, extent and gravity of the violations and, with respect to Respondent, its ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior such violations, the degree of culpability, and other such matters as just may require. To assess a penalty for the alleged violations of the RRP Rule in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to account 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* ("RRP Penalty Policy") (revised April 2013). Complainant has also taken into account EPA's *Lead-Based Paint Graduated Penalty Approach Policy for Small-Scale Businesses* ("GPA Policy") (September 20, 2019). The RRP Penalty Policy and GPA Policy provide a rational, consistent, and equitable calculation methodology for applying the above-listed statutory penalty factors to specific cases. Copies of the RRP Penalty Policy and the GPA Policy are attached to the Complaint. (Exhibits 3 and 4, respectively.) See Attachment I to the Complaint explaining the reasoning for this penalty. As noted above, Respondent has not filed an Answer, and, although Respondent attested that his annual income was less than \$100,000 (Exhibit 5), EPA has not found any information indicating that Respondent cannot pay the proposed penalty. In fact, as discussed above, Respondent indicated to counsel for Complainant that he would pay the proposed penalty. Absent any documentation from Respondent regarding his ability to pay, EPA continues to believe, in light of all applicable penalty assessment factors, that the amount of the proposed penalty is appropriate. However, due to the COVID-19 pandemic, Respondent's financial circumstances may have changed. If Respondent submits

additional information regarding his ability to pay that warrants a downward adjustment of the penalty, EPA would support such an adjustment, in accordance with the criteria outlined in TSCA Section 16, 15 U.S.C. § 2615 and EPA's LBP Consolidated ERPP guidance.

IV. Conclusion

The Complainant requests that the Regional Judicial Officer issue an order finding that Respondent is in default, that Respondent violated TSCA and the RRP Rule, and that an appropriate penalty be assessed in the amount of \$972.

Respectfully submitted,

Kathleen E. Woodward
Senior Enforcement Counsel

Date: August 3, 2020