

9:51 AM

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Received by
EPA Region VIII
Hearing Clerk

In the Matter of:)
)
Denver Paint Company LLC)
3839 Allison Circle)
Wheat Ridge, CO 80033,)
)
)
Respondent.)
)
Proceeding under section 16(a) of the)
Toxic Substances Control Act,)
42 U.S.C. § 2615(a).)
_____)

Docket No. TSCA-08-2021-0009

COMPLAINT

AND

**NOTICE OF OPPORTUNITY
FOR HEARING**

1. This Administrative Complaint and Notice of Opportunity for Hearing (Complaint) is issued by the Complainant, the United States Environmental Protection Agency (EPA), pursuant to section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), regulations implementing TSCA at 40 C.F.R. § 745.87, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. part 22. The EPA Region 8 Supervisor of the Toxics and Pesticides Section, Air Enforcement and Toxics Branch, Enforcement and Compliance Assurance Division is delegated the authority to sign this Complaint.

2. The Denver Paint Company, LLC (Respondent) of Wheat Ridge, Colorado, is hereby notified of the EPA's determination that it has violated sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, and federal regulations promulgated under TSCA and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. § 4851 *et seq.*, including 40 C.F.R. part 745, subpart E, and 40 C.F.R. part 745, subpart L, as amended (collectively

referred to herein as the “Renovation, Repair and Painting Rule” or “RRP Rule”). The Respondent is also hereby notified that the EPA seeks civil penalties pursuant to section 16 of TSCA, 15 U.S.C. § 2615, which provides that violations of TSCA sections 15 or 409 are subject to the assessment by the EPA of civil and/or criminal penalties.

I. STATUTORY AND REGULATORY AUTHORITY

3. In 1992, Congress passed the 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. Among the stated purposes of the Act is ensuring that the existence of lead-based paint hazards be taken into account in the rental and renovation of homes and apartments. To carry out these purposes, the Act added a new section to TSCA, entitled *Subchapter IV – Lead Exposure Reduction*, which includes TSCA sections 401-412, 15 U.S.C. §§ 2681-2692.

4. In 1996, the EPA promulgated regulations to implement section 402(a) of TSCA [*Lead-Based Paint Activities Training and Certification – Regulations*], 15 U.S.C. § 2682(a), which are set forth at 40 C.F.R. part 745, subpart L [*Lead-Based Paint Activities*, 40 C.F.R. §§ 745.220-745.239], commonly referred to as the “Lead-Based Paint Activities, Certification, and Training Rule” or the “LBP Activities Rule.” In 1998, the EPA promulgated regulations to implement section 406(b) of TSCA [*Lead Hazard Information Pamphlet – Renovation of Target Housing*],

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15 U.S.C. § 2686(b), which are set forth at 40 C.F.R. part 745, subpart E [*Residential Property Renovation*, 40 C.F.R. §§ 745.80-745.92], commonly referred to as the “Pre-Renovation Education Rule” or “PRE Rule.”

5. In 2008, the EPA promulgated regulations to implement section 402(c)(3) of TSCA [*Lead-Based Paint Activities Training and Certification – Renovation and Remodeling – Certification Determination*], 15 U.S.C. § 2682(c)(3), by amending both the PRE Rule at 40 C.F.R. part 745, subpart E, as well as the LBP Activities Rule at 40 C.F.R. part 745, subpart L, now commonly referred to as the “RRP Rule.”

6. The RRP Rule sets forth procedures and requirements for, among other things, the accreditation of training programs, certification of renovation firms and individual renovators, disclosure and work practice standards for renovation, repair, and painting activities in target housing and child-occupied facilities, and the establishment and retention of records to document compliance.

7. 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.

8. Pursuant to 40 C.F.R. § 745.82, the requirements of the RRP Rule apply to all renovations performed for compensation in target housing, as defined in TSCA section 401(17)

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and 40 C.F.R. § 745.103, and in “child-occupied facilities,” as defined in 40 C.F.R. § 745.83.

9. Pursuant to section 401(14) of TSCA, 15 U.S.C. § 2681(14), and 40 C.F.R. § 745.103, the term “residential dwelling” means either 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.

10. Pursuant to 40 C.F.R. § 745.83, the term “firm” means 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.

11. Pursuant to 40 C.F.R. § 745.83, the term “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,” as defined by 40 C.F.R. § 745.223. The term renovation includes, but is not limited to: the removal or modification 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, ceiling, 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. The term renovation does not include minor repair and

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maintenance activities.

12. Pursuant to 40 C.F.R. § 745.83, the term “minor repair and maintenance activities” means 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.

13. Pursuant to 40 C.F.R. § 745.83, the term “renovator” means 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 the EPA or by an EPA-authorized State or Tribal program.

14. Under the RRP Rule, except in circumstances specified by the regulations that are not relevant to the Respondent or the violations alleged in this Complaint, firms performing renovations in target housing and child-occupied facilities are, among other things, required to:

- i. Obtain an EPA certification for the firm prior to performing renovations;
- ii. Ensure that a certified renovator either performs the renovation or directs a properly trained worker to perform the renovation;
- iii. Follow lead-safe work practices as described in the RRP Rule; and
- iv. Retain all records necessary to demonstrate compliance with the same.

See 40 C.F.R. §§ 745.81(a)(2), 745.89(d)(1)-(5), 745.85, and 745.86(a) and (b).

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15. Pursuant to section 409 of TSCA, it is unlawful for any person to fail to comply with any rule issued under subchapter IV of TSCA (such as the RRP Rule). Pursuant to 40 C.F.R. § 745.87(a), the failure to comply with a requirement of the RRP Rule is a violation of section 409 of TSCA. Pursuant to 40 C.F.R. § 745.87(b), the failure to establish and maintain records required by the RRP Rule, or to make them available, is a violation of sections 15 and 409 of TSCA.

16. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of section 15 or 409 of TSCA shall be liable to the United States for a civil penalty.

17. Section 16(a) of TSCA and 40 C.F.R. § 745.87(d) authorize the assessment of a civil penalty of up to \$25,000 per violation per day of the RRP Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (Debt Collection Improvement Act), and the EPA's Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. part 19 (Penalty Inflation Rule), each such TSCA violation that occurs after December 6, 2013 is subject to penalties of up to \$37,500 per day per violation. *See* 78 Fed. Reg. 66643 (November 6, 2013). Under the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (2015 Inflation Adjustment Act), and the Penalty Inflation Rule, the \$37,500 maximum penalty was raised to \$39,873 for each such violation that occurs after November 2, 2015, and for which penalties are assessed on or after February 6, 2019. *See* Pub. L.114-74, section 701 (Nov. 2, 2015); 84 Fed. Reg. 2056 (Feb. 6, 2019) and 84 Fed. Reg. 5955 (Feb. 25,

2019). Under the Penalty Inflation Rule, each such TSCA violation that occurs after November 2, 2015, for which penalties are assessed on or after December 23, 2020, is subject to penalties of up to \$41,056 per day per violation. *See* 85 Fed. Reg. 83818 (Dec. 23, 2020).

II. GENERAL ALLEGATIONS

18. The Respondent is a Colorado limited liability company, organized in or around 2013, with its principal business offices located at 3839 Allison Circle in Wheat Ridge, Colorado.

19. The Respondent provides residential renovation services in and around the Denver, Colorado area. The Respondent specializes interior and exterior painting and operates under the direction of its owner and manager, Donald Paul Quillen.

20. In March 2020, the Respondent performed renovation activities at a residential property located at 9607 West 75th Way, Arvada, Colorado 80005 (hereinafter, the “75th Way Renovation”).

21. The 75th Way Renovation involved the preparation and painting of the exterior of the residential property located at 9607 West 75th Way, Arvada, Colorado 80005 (hereinafter, the Property).

22. The Property is privately owned and was built in 1973.

23. On or about March 10, 2020, a duly authorized EPA inspector conducted a compliance inspection at the 75th Way Renovation and observed the exterior conditions at the Property.

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24. During the March 10, 2020 inspection at the Property, the EPA sought records and other information relevant to the Respondent's compliance with RRP Rule requirements. To date, the Respondent has not provided the requested records.

25. The 75th Way Renovation performed by the Respondent, as described in Paragraphs 20 and 21 above, constituted a renovation for compensation within the meaning of TSCA section 406(b) and the RRP Rule. The 75th Way Renovation does not fall within any exemption set forth in 40 C.F.R. § 745.82.

26. The Property described in Paragraphs 20 and 21 above that is associated with the violations alleged in this Complaint is "target housing" as defined in section 401(17) of TSCA and 40 C.F.R. § 745.103. The Property does not satisfy the requirements for an exemption under the provisions of the Act, TSCA (including 15 U.S.C. § 2681(17)), or the RRP Rule (including 40 C.F.R. § 745.82).

27. At all times relevant to the violations alleged in this Complaint, the Respondent was a "firm," as defined in 40 C.F.R. § 746.83.

III. VIOLATIONS

28. The EPA has identified the following violations of TSCA and the RRP Rule based on documents and other information obtained from the Respondent during, or as a result of, the inspections and the EPA's investigation of the facts and circumstances underlying the violations.

FIRST COUNT
Failure to Obtain Firm Certification

29. Paragraphs 1 through 28, above, are incorporated by reference as if fully set forth herein.

30. Pursuant to 40 C.F.R. § 745.81(a)(2), no firm may perform, offer, or claim to perform renovations in target housing or child-occupied facilities without certification from the EPA under 40 C.F.R. § 745.89, unless the renovation is exempt under 40 C.F.R. § 745.82. Pursuant to 40 C.F.R. § 745.89(a), firms that perform renovations for compensation must apply to the EPA for certification to perform renovations or dust sampling.

31. In March 2020, the Respondent conducted the 75th Way Renovation that involved the disturbance of over twenty (20) square feet of exterior painted surface and, in particular, scraping paint in localized areas of the exterior of the Property in preparation for painting.

32. The 75th Way Renovation did not qualify as minor maintenance and repair activities under 40 C.F.R. § 745.83, nor was it exempt under 40 C.F.R. § 745.82.

33. At no time before or during the 75th Way Renovation had the Respondent obtained initial EPA-certification as a firm under 40 C.F.R. § 745.89(a).

34. The Respondent's performance of the 75th Way Renovation without being certified as a firm under 40 C.F.R. § 745.89 constituted a violation of 40 C.F.R. §§ 745.81(a)(2) and 745.89(a), and TSCA section 409.

35. The above-referenced violation alleged in this First Count is a prohibited act under TSCA section 409 and 40 C.F.R. § 745.87, and a violation for which penalties may be

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assessed pursuant to section 16 of TSCA, 15 U.S.C. § 2615.

SECOND COUNT

Failure to Ensure Certified Renovator Performs or Directs Work

36. Paragraphs 1 through 35, above, are incorporated by reference as if fully set forth herein.

37. Pursuant to 40 C.F.R. § 745.89(d)(1), firms performing renovations in target housing must ensure that all individuals who perform renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90. Pursuant to 40 C.F.R. § 745.89(d)(2), firms must ensure that a certified renovator is assigned to each renovation and discharges all the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

38. At no time during the 75th Way Renovation was any person performing the renovation activities either a certified renovator or trained by a certified renovator, nor was a certified renovator assigned to the 75th Way Renovation, as specified under 40 C.F.R. § 745.89(d)(1) and (d)(2).

39. The Respondent's failure to ensure that an individual performing renovation activities at the 75th Way Renovation was either a certified renovator or trained by a certified renovator, and its failure to ensure that a certified renovator was assigned to the 75th Way Renovation to carry out all of the responsibilities in 40 C.F.R. § 745.90 constituted a violation of 40 C.F.R. § 745.89(d)(1) and (d)(2).

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40. The above-listed violation alleged in this Second Count is a prohibited act under TSCA section 409 and 40 C.F.R. § 745.87 and is a violation for which penalties may be assessed pursuant to section 16 of TSCA.

THIRD COUNT

Failure to Establish and Maintain Records

41. Paragraphs 1 through 40, above, are incorporated by reference as if fully set forth herein.

42. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations are required to retain, and if requested, make available to the EPA all records necessary to demonstrate compliance with the RRP Rule for a period of three years following completion of a renovation.

43. With regard to the 75th Way Renovation, the Respondent failed to establish and maintain or to make available records necessary to demonstrate compliance with the RRP Rule, and such failure constituted a violation of 40 C.F.R. § 745.86(a).

44. The above-listed violation alleged in this Third Count is a prohibited act under TSCA section 409 and 40 C.F.R. § 745.87, and a violation for which penalties may be assessed pursuant to section 16 of TSCA.

IV. PROPOSED PENALTY

45. Section 409 of TSCA and 40 C.F.R. § 745.87 provide that, for purposes of enforcing the RRP Rule under TSCA, the penalty for each violation under TSCA section 16 shall be no more than \$25,000. Pursuant to the Debt Collection Improvement Act, the 2015 Inflation Adjustment Act, and the EPA's Penalty Inflation Rule, at 40 C.F.R. § 19.4, the maximum

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penalty for each such TSCA violation was increased to \$41,056 for violations that occurs after November 2, 2015, for which penalties are assessed on or after December 23, 2020. *See* 85 Fed. Reg. 83818 (Dec. 23, 2020).

46. In determining the amount of any penalty to be assessed, section 16(a) of TSCA requires the EPA to consider the nature, circumstances, extent and gravity of the violations and, with respect to the violator, ability to pay, the effect of the proposed penalty on the ability of the violator to continue to do business, any history of prior such violations, the degree of culpability of the violator, and such other matters as justice may require. *See* 15 U.S.C. § 2615(a)(2)(B). To assess a penalty for the violations alleged herein, the EPA has taken into account the particular facts and circumstances of this case with specific reference to the EPA's August 2010 *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). A copy of the RRP Penalty Policy is enclosed with this Complaint. The RRP Penalty Policy provides a rational, consistent, and equitable calculation methodology for applying the above-listed statutory penalty factors to specific cases.

47. By this Complaint, the EPA seeks to assess civil penalties of \$49,665 against the Respondent for the following violations:

- i. FIRST COUNT: At least one (1) violation of 40 C.F.R. §§ 745.81(a)(2) and 745.89(a) for performing renovation activities without EPA certification as a firm – The RRP Rule requirements are intended to prevent exposure to lead during renovations. A firm's failure to obtain initial EPA certification prior to offering or performing renovations in target housing has a medium probability of impacting human health and the environment through, for example, failure to use best work

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practices, failure to convey to tenants the risks associated with renovations, and failure to have adequate knowledge for meeting all RRP Rule obligations;

- ii. SECOND COUNT: At least one (1) violation of 40 C.F.R. §§ 745.89(d)(1) and (d)(2) for failure to use certified renovators – A firm’s failure to assign and use certified renovators for renovation activities performed in target housing has a medium probability of impacting human health and the environment. The failure to assign and use certified renovators to discharge all renovator duties under the RRP Rule presents a medium probability that renovators will not, for example, use best renovation practices and EPA-approved methods during the work and, thereby, will increase the chances of an occupant’s exposure to lead during and/or after the renovation; and
- iii. THIRD COUNT: At least one (1) violation of 40 C.F.R § 745.87(b) for failure to establish and maintain or make available records – A firm’s failure to establish and maintain or make available records necessary to document compliance with the RRP Rule has a medium probability of impacting human health and the environment.

48. Enclosed with this Complaint is the EPA’s Proposed Penalty Summary, which specifies the proposed penalty amount of \$49,665 for all of the violations alleged in this proceeding and explaining how the amount was calculated, as required by the Consolidated Rules of Practice. The EPA has calculated the proposed penalty based, in part, on its current knowledge of the Respondent’s financial condition. The proposed penalty may be adjusted if the Respondent establishes *bona fide* issues or defenses relevant to the appropriate amount of the penalty. The Respondent shall pay the civil penalty with a cashier’s or certified check, payable to the “Treasurer, United States of America.” The Respondent should note on the check the following: ***In the Matter of Denver Paint Company LLC, and the EPA Docket No. (listed on the top of the first page of this Complaint and Notice of Opportunity for Hearing)***. The check shall be mailed to the following address:

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

In addition, at the time of payment, notice of payment of the civil penalty and copies of the check should be mailed to:

Melissa Haniewicz, Regional Hearing Clerk
U.S. Environmental Protection Agency – Region 8
1595 Wynkoop Street (Mail Code 8ORC)
Denver, Colorado 80202

Notice of payment may be given to Melissa Haniewicz via e-mail, at haniewicz.melissa@epa.gov

and

Marc Weiner, Senior Assistant Regional Counsel
U.S. Environmental Protection Agency – Region 8
1595 Wynkoop Street (Mail Code 8ORC-LE-R)
Denver, Colorado 80202

Notice of payment may be given to Marc Weiner via e-mail, at weiner.marc@epa.gov.

49. Neither the assessment nor payment of an administrative penalty shall affect the Respondent's continuing obligation to comply with all applicable requirements of federal law.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

50. As provided by section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and in accordance with 40 C.F.R. § 22.14 of the Consolidated Rules of Practice, the Respondent has a right to request a hearing on any material fact alleged in this Complaint or on the appropriateness of the proposed penalty. Any such hearing would be conducted in accordance with 40 C.F.R.

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part 22. A request for a hearing must be incorporated into a written Answer. **The Respondent must file the original and one copy of the written Answer to this Complaint within thirty (30) days of receipt of this Complaint.** The Respondent shall send the Answer to the Regional Hearing Clerk via mail and email at the following address:

Melissa Haniewicz, Regional Hearing Clerk
U.S. Environmental Protection Agency – Region 8
1595 Wynkoop Street (Mail Code 8ORC)
Denver, Colorado 80202
Haniewicz.Melissa@epa.gov

The Respondent shall serve copies of the Answer(s), and any other documents submitted in this proceeding, to the EPA's counsel via mail and email at the following address:

Marc Weiner Senior Assistant Regional Counsel
U.S. Environmental Protection Agency – Region 8
1595 Wynkoop Street (Mail Code 8ORC-R)
Denver, Colorado 80202
weiner.marc@epa.gov

In its Answer(s), the Respondent may contest any material fact contained in the Complaint. The Answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: (i) the circumstances or arguments alleged to constitute the grounds of any defense; (ii) the facts the Respondent disputes; (iii) the basis for opposing any proposed relief; and, (iv) whether a hearing is requested. Where the Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. Any failure of the Respondent to admit, deny, or explain any material fact contained in the Complaint constitutes an admission of that allegation. *See* 40 C.F.R. § 22.15 for the required contents of an Answer.

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51. If the Respondent fails to file a timely Answer to the Complaint, the Respondent may be found to be in default, pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by the Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of the Respondent's right to contest such factual allegations under section 16(a)(2)(A) of TSCA. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final.

VI. SETTLEMENT CONFERENCE

52. Whether or not a hearing is requested upon filing an Answer, the Respondent may confer informally with the EPA concerning the alleged violations. Such conference provides the Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement shall be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA Region 8.

53. Please note that a request for an informal settlement conference does not extend the period within which a written Answer must be submitted to avoid default but that the deadline by which the Respondent must file an Answer is only extended on a motion granted by the Regional Judicial Officer in accordance with the Consolidated Rules of Practice. To explore the possibility of settlement in this matter, the Respondent should contact Marc Weiner, Senior Assistant Regional Counsel, at the address provided above, or by calling him at (303) 312-6913 (direct). Mr. Weiner has been designated to represent the EPA in this matter and is authorized,

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under 40 C.F.R. § 22.5(c)(4), to receive service on behalf of the EPA.

David Cobb, Supervisor
Toxics and Pesticides Enforcement Section
Enforcement and Compliance Assurance Division
EPA Region 8

Date: 9/13/2021

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing administrative Complaint and Notice of Opportunity for Hearing has been provided to the following persons on the date noted below:

Original and one copy, to:

Melissa Haniewicz, Regional Hearing Clerk
U.S. Environmental Protection Agency – Region 8
1595 Wynkoop Street (Mail Code 8ORC)
Denver, Colorado 80202

One copy (with all enclosures listed in the cover letter),
by Certified First Class U.S. Mail, Return
Receipt Requested, to:

Donald Paul Quillen, Owner and Registered Agent
Denver Paint Company LLC
3839 Allison Circle
Wheat Ridge, CO 80033

Ellen Wells, Legal Assistant
U.S. Environmental Protection Agency – Region 8
1595 Wynkoop Street (Mail Code 8ORC-LE)
Denver, Colorado 80202
E-mail: Wells.EllenP@epa.gov