

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

<hr/>	)	
In the Matter of:	)	
	)	
Premier Flipping LLC	)	
8 Meadowlark Road	)	<b>Docket No.</b>
Enfield, Connecticut	)	<b>TSCA-01-2018-0017</b>
06082	)	
	)	
Respondent.	)	
	)	
Proceeding under Section 16(a) of the	)	
Toxic Substances Control Act,	)	
15 U.S.C. § 2615(a)	)	
<hr/>	)	

**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, Premier Flipping LLC (“Respondent”), is in default in this matter, 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 \$4,667.

**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 September 27, 2018. In the Complaint, EPA alleged that Respondent violated federally enforceable provisions of TSCA Section 409, the Act, 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.

After nine unsuccessful attempts to serve Respondent a copy of the Complaint by mail and through use of a professional process server, Complainant served the Complaint, including a copy of the Part 22 rules, on Respondent by hand on July 25, 2019. See 40 C.F.R. § 22.5(b)(1) & (b)(1)(ii)(A). Respondent accepted the complaint package and signed a statement that he had received the Complaint. (Exhibit 2.) Accordingly, service was complete on July 25, 2019. A copy of the proof of service dated July 25, 2019, is attached as Exhibit 3. See 40 C.F.R. § 22.7(c).

Respondent has not filed an answer, and the 30-day period for filing an answer to the Complaint 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 TSCA. 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 the removal of building components (e.g. walls, ceilings, plumbing, windows), and includes the renovation of a building for the purpose of converting a building or portion of a building into target housing. 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 a limited liability company, and Eder Rapalo is the LLC's sole member. (Complaint, paragraph 9). Respondent's business address is listed with the Secretary of State of Connecticut as 8 Sullivan Avenue, Enfield, Connecticut. *Id.* In 2017, Respondent was hired to install vinyl siding and aluminum trim on the exterior of a duplex building located at 32-34 Lilac Street, in East Hartford, Connecticut ("32-34 Lilac St."). (Complaint, paragraph 10). According to East Hartford property records, 32-34 Lilac St. is a two family, duplex building with six bedrooms built in 1900. *Id.* At all times relevant to the Complaint, the building located at 32-34 Lilac St. was "target housing," as defined in Section 401(17) of TSCA and 40 C.F.R. § 745.103. (Complaint, paragraph 11). Furthermore, the building does not satisfy the requirements for an exemption to the provisions of the Act, or the RRP Rule. (Complaint, paragraph 18.) 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 20.) At all times relevant to this Complaint, Respondent was not certified as a firm under the RRP Rule. (Complaint, paragraph 14.)

The work done by Respondent at 32-34 Lilac St. came to the attention of EPA via a referral from the City of East Hartford, Connecticut Code Enforcement Office. (Complaint, paragraph 12.) On May 16, 2017, EPA representatives conducted an announced inspection at 32-34 Lilac St., Hartford, Connecticut while Respondent was performing work at the property. (Complaint, paragraph 13). The inspectors found deteriorating painted wood trim and deteriorating painted asbestos transite siding that was disturbed as part of the siding and trim replacement. *Id.* The inspectors also found the area surrounding the building to be covered in paint chips, as well as painted debris from construction work. *Id.* During the EPA Inspection, Mr. Rapalo stated to the EPA representatives that Respondent was not a certified firm as required by the RRP Rule. (Complaint, paragraph 14).

On March 16, 2018, EPA Region 1 issued to Respondent a “Notice of Investigation Results” and an “Expedited Settlement Agreement,” that addressed a single RRP Rule violation, consistent with the EPA Office of Enforcement and Compliance Assurance’s August 19, 2015 Lead-Based Paint Expedited Settlement Agreement Policy. (Complaint, paragraph 15). The single RRP Rule violation related to the Respondent’s failure to obtain firm certification in accordance with 40 C.F.R. § 745.89(a), pursuant to 40 C.F.R. § 745.81(a)(2)(ii), which provides that no firm may perform, offer, or claim to perform renovations in target housing or child-occupied facilities without certification. The Expedited Settlement Agreement proposed a fine of \$200 in accordance with EPA’s microbusiness Expedited Settlement Policy. Respondent did not respond to EPA’s offer of expedited settlement. *Id.*

On September 27, 2018, EPA Region 1 issued to Respondent by Certified Mail - Return Receipt Requested, a “Complaint and Notice of Opportunity for Hearing” alleging a single count of RRP Rule violations. Complainant did not receive confirmation of receipt of the Complaint.

On July 25, 2019, EPA staff served Respondent with the Complaint in person by hand at the Respondent's home. Respondent signed for the Complaint, completing service. (*See* Exhibit 2). At the time of service, Respondent attested in writing that his income was less than \$100,000. *Id.* Respondent has yet to respond to the Complaint.

Based on the above-described inspection and information, Complainant has identified the following violation of TSCA and the RRP Rule. (Complaint, paragraphs 23-27).

A. Count 1 – Failure to Obtain Firm Certification under RRP Rule

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 23.) The subject house at 32-34 Lilac St. is target housing because it was constructed in 1900, well prior to 1978, and is not housing for the elderly or persons with disabilities or a 0-bedroom dwelling. At the time of the renovation at the house at 32-34 Lilac St., Respondent had not applied for or received RRP Rule firm certification from EPA. (Complaint, paragraph 24.) 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 26.) None of the exceptions identified in 40 C.F.R. § 745.82 applies to the renovation at the Subject Property. (Complaint, paragraph 11.) 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 27.)

### III. A Penalty of \$4,667 Should Be Assessed

Complainant recommends the imposition of a \$4,667 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 \$38,892.

Section 16 of TSCA 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 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"). The LBP Consolidated ERPP provides a rational, consistent, and equitable calculation methodology for applying the statutory factors enumerated above to particular cases. As noted above, EPA did not receive ability-to-pay information from Respondent prior to filing and serving the Complaint. Given the lack of

information about Respondent's finances and the timing of the inspection, EPA did not take into account EPA's *Lead-Based Paint Graduated Penalty Approach Policy for Small-Scale Businesses* ("GPA Policy") (September 20, 2019) when calculating the penalty requested in the Complaint. See Attachment I to the Complaint explaining the reasoning for this penalty. Copies of the LBP Consolidated ERPP and the GPA Policy are attached to the Complaint. (Exhibits 4 and 5, respectively.)

At the time of service, the Respondent attested that his income was \$40,000. (Exhibit 2.) However, Complainant has not received any documentation from Respondent confirming his attestation. If the Respondent's income were to be confirmed below \$100,000 by a copy of the Respondent's tax return, then Complainant would consider applying the GPA Policy for the Respondent. Under the GPA Policy, the penalty Respondent's violation would be \$420. (*See* Exhibit 5.)

Respondent has not filed an Answer to the Complaint, and, although Respondent attested that his annual income was less than \$100,000 when he received the Complaint (Exhibit 2), EPA has not found any information indicating that Respondent cannot pay the proposed penalty. Absent any additional 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 of \$4,667 is appropriate. However, 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 \$4,667.

Respectfully submitted,

---

Kathleen E. Woodward  
Senior Enforcement Counsel