

Parties

3. The Complainant, by delegation from the Administrator of the EPA, is the Chief of the Toxics and Pesticides Branch at EPA, Region 7.

4. Respondent is Extreme Home Renovations, LLC, a limited liability corporation registered in Missouri.

Statutory and Regulatory Background

5. 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*, TSCA Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

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

7. 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 "Renovation, Repair and Painting Rule" or the "RRP Rule"). *See* Lead, Renovation, Repair, and Painting Program, 73 Fed. Reg. 21692, 21758 (issued Mar. 31, 2008) (codified at 40

C.F.R. Part 745, Subpart E). The RRP Rule pertains to lead-based paint activities, and the regulations set forth work practice standards for the renovation of residences built prior to 1978 and require certification of individuals and firms who are involved in these activities.

8. Section 401(17) of TSCA, 15 U.S.C. § 2681(17) 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.

9. 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 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. 40 C.F.R. § 745.89(a)(1) provides that “[f]irms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.”

11. 40 C.F.R. § 745.89(d)(2) requires firms performing renovations to ensure that “[a] certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90 [Renovator Certification and Dust Sampling Technician Certification].”

12. The RRP Rule sets forth the regulations for “Work Practice Standards” that must be followed by firms performing renovations on target housing. These work practice standards are outlined in 40 C.F.R § 745.85, and they require, in pertinent part:

(a) Occupant Protection. Firms must 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 the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed. 40 C.F.R. § 745.85(a)(1); and

(b) Waste From Renovations. Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered. 40 C.F.R. § 745.85(a)(4)(i).

13. Pursuant to 15 U.S.C. § 2686, EPA promulgated regulations requiring each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation. 40 C.F.R. § 745.84. 40 C.F.R. § 745.84(a)(1) requires that, no more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must provide the owner of the unit with the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* (EPA Pamphlet).

14. Failure to comply with any provision of 40 C.F.R. Part 745, Subpart E (RRP Rule) violates Section 409 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).

15. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), 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, 15 U.S.C. § 2689. 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 Factual Allegations

16. Presently, and at the time of the actions described herein, Respondent has been a limited liability corporation registered in Missouri. Respondent provides general contracting services including residential renovation. Therefore, Respondent was a “firm” as defined in 40 C.F.R. § 745.83.

17. Respondent served as the general contractor to renovate a residential property located 10112 East 83rd Street, Raytown, Missouri (“Property”). The project involved removal and replacement of a patio door, which Respondent performed. The Respondent subcontracted additional renovation activities at the property.

18. At all times relevant to this Complaint, the renovation project at said residential property was a “renovation for compensation” subject to the RRP Rule. *See* 40 C.F.R. § 745.82.

19. The Property was a vacant residence built in 1971. The Property was constructed before 1978 and is target housing as defined by 40 C.F.R. § 745.103.

20. On March 7, 2012, an inspector from EPA Region 7 conducted an inspection of the work site at the Property to evaluate Respondent's compliance with the RRP Rule.

21. As a result of the inspection and additional information obtained by EPA, Complainant has identified the following violation of Section 409 of TSCA, the Residential Lead-Based Paint Hazard Reduction Act of 1992, and the RRP Rule, as set forth in 40 C.F.R. Part 745, Subpart E.

Alleged Violations

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

Count One

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

24. Pursuant to 40 C.F.R. § 745.89(a)(1), firms performing renovations for compensation must be certified by the EPA and have obtained initial certification prior to performance of renovations.

25. At the time of inspection, Respondent had not obtained initial certification to be a firm performing renovations for compensation.

26. Respondent's failure to ensure that it obtained initial firm certification prior to the removal and replacement of the patio door at the Property for compensation constitutes a violation of 40 C.F.R. § 745.89(a)(1). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count Two

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

28. Pursuant to 40 C.F.R. § 745.89(d)(2), firms performing renovations for compensation

must ensure that a certified renovator is assigned to each renovation performed by the firm, and that the certified renovator discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

29. Respondent, though performing renovation for compensation, did not ensure that a certified renovator was assigned to the removal and replacement of the patio door at the Property, nor did a certified renovator discharge of all the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

30. Respondent's failure to ensure that a certified renovator was assigned to, and that a certified renovator discharged of certified renovator responsibilities relating to, the removal and replacement of the patio door at the Property, constitutes a violation of 40 C.F.R. § 745.89(d)(2). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count Three

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

32. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations for compensation must ensure that all renovations performed by the firm are performed in accordance with the work practice standards set forth in § 745.85.

33. Pursuant to 40 C.F.R. § 745.85(a)(1), "firms must 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 the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed."

34. Pursuant to 40 C.F.R. § 745.85(a)(4)(i), "waste from renovation activities must be

contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.”

35. Respondent did not ensure, during removal and replacement of the patio door for compensation at the Property, that (a) the work area contained signage indicating the work area and warning others to stay away from the work area; and (b) waste from renovation activities was contained to prevent releases of dust and debris before the waste was removed from the work area for storage or disposal. Consequently, these activities were not performed at the Property during the renovation.

36. Respondent’s failure to ensure, for the removal and replacement of the patio door for compensation at the Property, that (a) the work area contained signage appropriate to warn others to stay outside of the work area; and (b) waste was contained to prevent releases of dust and debris before the waste was removed from the work area for storage or disposal, constitutes a violation of 40 C.F.R. § 745.89(d)(3). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count Four

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

38. Pursuant to 40 C.F.R. § 745.84(a)(1), firms performing renovations must, no more than 60 days before beginning renovation activities in any dwelling unit of target housing, provide the owner of the unit with the EPA-approved lead hazard information pamphlet.

39. Respondent failed to provide the property owner with an EPA-approved lead hazard information pamphlet before beginning renovation activities.

40. Respondent’s failure to provide the Property owner with an EPA-approved pamphlet is a violation of 40 C.F.R. § 745.84(a)(1). Respondent, therefore, violated Section 409 of TSCA,

15 U.S.C. § 2689.

Relief

41. 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 administrative penalty be assessed against Respondent.

42. 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.

43. 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 the Respondents: a) their ability to pay, b) the effect on their ability to continue to do business, c) any history of prior violations, d) the degree of culpability, and e) such other matters as justice may require.

44. To assess a penalty for the alleged violations 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"), a copy of which is enclosed with this Complaint. The LBP Consolidated ERPP provides a rational, consistent, and

equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases. Complainant proposes that Respondent be assessed a civil penalty in the amount of Twenty Thousand Six Hundred Eighty Dollars (\$20,680) for the TSCA violations alleged in this Complaint (*See* Attachment 1 to this Complaint explaining the reasoning for this penalty.).

45. The proposed penalty is based on the best information available to EPA at the time the Complaint is issued. The penalty may be adjusted if the Respondents establish bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty.

Payment of Proposed Penalty in Full

46. A 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 penalty, \$20,680 may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 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, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

A copy of the check must simultaneously be sent to the following:

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

and

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, KS 66219.

Checks should reference the name and docket number of this Complaint.

Payment of Proposed Penalty in Lieu of an Answer

47. A Respondent who wishes to resolve a proceeding by paying the proposed penalty in full instead of filing an answer to the Complaint may do so within thirty (30) days of receipt of the Complaint, in accordance with the procedures set forth above. A Respondent who wishes to resolve a proceeding by paying the proposed penalty in full instead of filing an answer but who needs additional time to pay the penalty, 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. 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. A 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 a Respondent to default, as set forth below.

NOTICE OF OPPORTUNITY FOR HEARING

Answer and Request for Hearing

48. A 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 a Respondent has any knowledge. Where a 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: a) the circumstances or arguments which are alleged to constitute the grounds of any defense; b) the facts that a Respondent disputes; c) the basis for opposing the proposed penalty; and d) whether a hearing is requested.

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

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

A copy of the answer shall be sent to:

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, KS 66219.

Default

50. If, within thirty (30) days of receipt of a Complaint, a 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; a Respondent may be found in default. Default by a Respondent constitutes, for the purposes of this proceeding, an admission of all facts alleged in the Complaint and a waiver of a Respondents' 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

51. 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 a Respondent requests a hearing, a 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:

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, KS 66219
Telephone (913) 551-7501

52. 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. No settlement or consent agreement shall dispose of this proceeding without a final order from the Regional

Judicial Officer or the Regional Administrator.

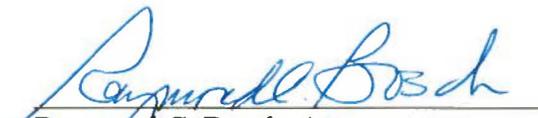
53. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer must be filed.

Date: 9/30/2013



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

Date: Sept 30, 2013



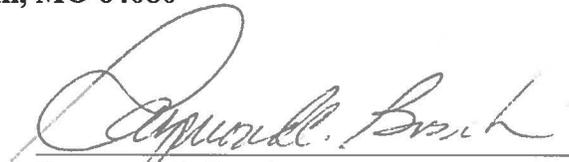
Raymond C. Bosch, Attorney
Office of Regional Counsel

Attachment

CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Complaint, Compliance Order, 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, KS 66219, on September 30, 2013. A true and correct copy of the foregoing Complaint, Compliance Order, 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 or Suspension of Permits were sent by certified mail, return receipt requested, on September 30, 2013 to

**Extreme Home Rennovations, LLC
223 North Taylor Street
Pleasant Hill, MO 64080**

A handwritten signature in cursive script, appearing to read "Raymond C. Bosch", written over a horizontal line.

Raymond C. Bosch
Assistant Regional Counsel

Penalty Calculation:

Because there were no children residing in the target housing unit, EPA Region 7 assigned a minor level of harm on the "Gravity" based portion of the penalty matrix set forth in the *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (LBP Consolidated ERPP). EPA Region 7 calculated the penalty in this matter based upon the the LBP Consolidated ERPP. The calculation is as follows:

Violation	Extent	Circumstance	Gravity Based Penalty
745.89(a)(1) Failure to obtain initial firm certification from EPA	Minor	Level 3a	\$4,500
745.89(d)(2) Failure to assign a certified renovator	Minor	Level 3a	\$4,500
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
745.85(a)(4)(i) Failure 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 and/or failure to cover a chute if it is to be used to remove waste from the work area.	Minor	Level 2a	\$6,000
745.84(a)(1) Failure to provide property owner with the EPA approved lead hazard information pamphlet	Minor	Level 1b	\$2,840
Total Penalty			\$20,680