UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

June 26, 2024 @ 9:49 am
USEPA – Region II
Regional Hearing Clerk

In the Matter of A&I Developers, Inc., Respondent, Proceeding under Section 16(a) of the Toxic Substances Control Act.	Honorable Helen Ferrara Presiding Officer Docket No. TSCA-02-2018-9289

PROPOSED DEFAULT ORDER

By Motion for an Order of Default, the Complainant, the Acting Director, Enforcement and Compliance Assurance Division ("ECAD"), previously known as the Division of Enforcement and Compliance Assistance ("DECA"), Region 2 ("Region"), of the United States Environmental Protection Agency ("EPA" or "Complainant"), has moved for the assessment of liability and civil penalties against A&I Developers, Inc. ("Respondent" or "A&I Developers") for violations of Section 409 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2689. Specifically, the Complainant requested assessment of liability and civil penalties in the total amount of Thirty-Two Thousand Eight Hundred Fourteen dollars ($32,814).

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Compliance Orders, and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"), and based upon the record in this matter and the following Findings of Fact,

Conclusions of Law and Determination of Liability and Penalty, civil penalties in the amount of $32,814 are hereby assessed against Respondent for TSCA violations.

BACKGROUND

This is a proceeding under Section 16(a), 15 U.S.C. § 2615(a), of TSCA, 15 U.S.C. § 2601 *et seq.* The Region initiated this proceeding by issuing an *Administrative Complaint* ("Complaint") on September 25, 2018 against Respondent. Complainant caused to be served, by certified mail, return-receipt requested, upon the Respondent's business mailing address and its New York Department of State ("NYDOS") process service address a copy of the Complaint, alleging violations of TSCA. Enclosed with the copy of the Complaint were a cover letter and a copy of the Consolidated Rules of Practice. The Respondent A&I Developers has engaged in property renovations from a business located in Jamaica, New York. In its Complaint, the Region alleged that Respondent had committed five (5) violations of Section 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745 Subpart E, *Residential Property Renovation*.

The Complaint stated on Page 10 as follows:

> If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [*i.e.*, in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).
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> Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R.§ 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such

final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

The cover letter for the Complaint informed Respondent of its right to a formal hearing to contest the allegations and/or proposed penalty in the Complaint within thirty days of receipt of the Complaint and that a default order might be entered against it if it did not file an Answer to the Complaint or request an extension of time to file an Answer.

The Complaint and the Consolidated Rules of Practice were received and accepted by M. Tain on September 29, 2018 at A&I Developers' NYDOS process service address, as documented by the signed green card returned to EPA. An Answer to the Complaint was due on or about November 1, 2018. The copy of the Complaint sent to the Respondent's business mailing address was returned to EPA. On February 1, 2019, Complainant sent Respondent, by certified mail and return-receipt requested, to both its business mailing address and process service address, a letter memorializing the non-response and failure to file an Answer and enclosing another copy of both the Complaint and the Consolidated Rules of Practice. On March 14, 2019, EPA sent a follow-up letter to A&I Development at the company's Jamaica business address by First Class Mail, that included a copy of the Complaint and Consolidated Rules of Practice. The letter alerted the Respondent that the deadline for filing an Answer to the Complaint had passed; stated that EPA intended to seek a default order against the Respondent; set forth the legal effects of a default order; and, requested that the Respondent contact EPA if it intended to file an Answer to EPA's Complaint. EPA's March 14, 2019 follow-up letter was not returned to the EPA. To date, the Respondent has not filed an Answer to the Complaint.

On ________________________, the Complainant filed a *Motion for Default Judgment* ("Default Motion"), seeking a determination that Respondent was liable for the alleged violations and a penalty assessment, together with a *Memorandum in Support of Complainant's*

Motion for Order of Default with declarations attached thereto ("Memorandum"). To date, in addition to not filing an Answer to the Complaint, Respondent has not responded to the Default Motion.

STATUTORY AND REGULATORY BACKGROUND

1. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("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,* Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

2. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations governing the training and certification of individuals and contractors engaged in lead-based paint activities, including renovation of residences built prior to 1978. Section 406 of TSCA, 15 U.S.C. § 2686, requires that the Administrator promulgate regulations requiring persons who perform for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant prior to commencing the renovation.

3. Section 407 of TSCA, 15 U.S.C. § 2687, requires that the regulations promulgated pursuant to TSCA include recordkeeping and reporting requirements.

4. Section 409 of TSCA, 15 U.S.C. § 2689, makes it unlawful for any person to fail or refuse to comply with these sections of TSCA, as well as all other provisions, rules or orders under Subchapter IV of TSCA.

5. In 1996, the 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, *Lead Based Paint Activities.* In 1998, the EPA promulgated regulations to implement Section 406(b) and Section 407 of TSCA, 15 U.S.C. § 2686(b) and 2687. These regulations were set forth at 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation.* In 2008, the EPA promulgated regulations to implement Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), by amending and recodifying regulations at 40 C.F.R. Part 745, Subparts E and L, and adding additional regulations at 40 C.F.R. Subpart L (Renovation, Repair, and Painting Rule). *See* Lead; Renovation, Repair, and Painting Program, 73 Fed. Reg. 21692, 21758 (Mar. 31, 2008).

6. The Renovation, Repair, and Painting (RRP) Rule establishes work practice standards for renovations that disturb paint in target housing and child-occupied facilities and requires firms and individuals performing, offering, or claiming to perform such renovations to obtain EPA certification.

7. The regulations at 40 C.F.R. §§ 745.80 and 745.82(a) provide that the regulations contained in 40 C.F.R. Subpart E, *Residential Property Renovation,* apply to all renovations performed for compensation in target housing and child-occupied facilities.

8. The regulation at 40 C.F.R. § 745.83 defines "renovation" as 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.

9. Section 401(17) of TSCA, 15 U.S.C. § 2681(17), defines "target housing" as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any zero-bedroom dwelling (unless any child who is less than six years of age resides or is expected to reside in such housing).

10. The regulation at 40 C.F.R. § 745.83 defines "firm" as 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. The regulation at 40 C.F.R. § 745.83 defines "person" as any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

12. The regulation at 40 C.F.R. § 745.87(a) provides that failure or refusal to comply with any provision of 40 C.F.R. Part 745, Subpart E, is a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail to comply with, *inter alia,* any provision of 40 C.F.R. Part 745, Subpart E.

13. The regulation at 40 C.F.R. § 745.87(d) provides that violators may be subject to civil sanctions pursuant to Section 16 of TSCA, 15 U.S.C. § 2615. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides that any person who violates Section 409 of TSCA, 15 U.S.C. § 2689, shall be liable to the United States for a civil penalty for each such violation. Each

day that such a violation continues constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. § 2614. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19 have increased the statutory maximum penalties over time. At the time EPA issued the Complaint in this proceeding, the maximum penalty for violations that occurred after November 2, 2015, and that were assessed on or after January 15, 2018 was $38,892. *See* 84 FR 2056, February 6, 2019. Pursuant to this statutory authority EPA has subsequently raised the maximum penalty amount, but the penalty amount being sought by the Complainant has not been increased in this case.

FINDINGS OF FACT

Pursuant to 40 C.F.R. § 22.17(c) and based upon the entire record, the Undersigned, as Presiding Officer in this matter, makes the following findings of fact (which are based on the factual pleadings in the Complaint):

1. Respondent is incorporated under the laws of New York State.

2. Respondent's primary place of business has been located at 159-20 115th Road, Jamaica, New York 11434.

3. Respondent's address listed with the NYDOS for service of process is 265 Sunrise Highway Ste 1-304, Rockville Centre, NY 11570.

4. On or about July 22, 2016, EPA received a tip/complaint from the New York City Department of Health and Mental Hygiene ("NYCDOHMH") which alleged that workers were performing renovations in a manner that created a lead dust condition at 2020 Honeywell Avenue, Bronx, NY 10460 ("the 2020 Honeywell Avenue property").

5. The tip/complaint was based on a February 24, 2016 NYCDOHMH inspection of the 2020 Honeywell Avenue property.

6. The NYCDOHMH inspector observed active renovation of several apartments and construction dust throughout the 2020 Honeywell Avenue property and collected 15 dust wipe samples during the inspection. NYCDOHMH issued a stop work order requiring the cleanup of all debris and dust generated by the work.

7. A March 2, 2016 analytical report prepared by EMSL Analytical, Inc. (an EPA accredited lab for lead analysis) indicated that 10 of the dust wipe samples collected by NYCDOHMH tested positive for lead.

8. The 2020 Honeywell Avenue property has 4 stories and 16 residential units and was built in 1931.

9. The 2020 Honeywell Avenue property is "target housing" within the meaning of Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and the RRP Rule.

10. The New York City Department of Buildings ("NYCDOB") issued a permit to A&I Developers, Inc. for interior renovation at the 2020 Honeywell Avenue property on or about February 5, 2016.

11. At the time of the NYCDOHMH inspection, Respondent was performing renovations at the 2020 Honeywell Avenue property.

12. Respondent's renovation work at the 2020 Honeywell Avenue property was performed on the interior of the entire building and included demolition.

13. Respondent is, and at all times relevant to the Complaint was, the "firm" contracted to perform "renovation," as those terms are defined in 40 C.F.R § 745.83 pursuant to TSCA § 402(c)(3), 15 U.S.C. § 2682(c)(3), of the property located at 2020 Honeywell Avenue,

Bronx, NY 10460.

14. Respondent's renovation of the 2020 Honeywell Avenue property was a "renovation for compensation" as specified in 40 C.F.R. § 745.82(a).

15. In the course of Respondent's renovation of the 2020 Honeywell Avenue property, Respondent disturbed more than six square feet of painted surface per room.

16. Respondent is subject to the regulations and requirements pertaining to Residential Property Renovation promulgated pursuant to 15 U.S.C. § 2682(c)(3), and set forth at 40 C.F.R. Part 745, Subpart E.

17. On or about March 5, 2016, EPA issued an Information Request Letter ("IRL") to Mr. Ashad Ajim, A&I Developers Inc., 159-20 115th Road, Jamaica, New York 11434 regarding A&I Developers' compliance with regulations and requirements pertaining to Residential Property Renovation at the 2020 Honeywell Avenue property.

18. On May 27, 2016, Ashad Ajim, on behalf of A&I Developers, submitted to EPA an email response to the IRL (the "Response").

Failure to Obtain EPA Certification
(Count 1)

19. Under 40 C.F.R. § 745.81(a)(2)(ii), firms performing renovations for compensation on target housing, on or after April 22, 2010, must be certified by the EPA and have obtained initial certification prior to performance of renovations, unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82. In addition, 40 C.F.R. § 745.89(a)(1) requires firms that perform renovations at target housing for compensation to apply to EPA for certification to perform renovations.

20. At the time of the renovation of the 2020 Honeywell Avenue property, Respondent had neither applied to EPA for certification nor obtained such certification.

21. In the IRL, EPA inquired whether Respondent had obtained certification from EPA to perform renovations to which Respondent replied "No" in the Response.

22. As of September 19, 2018, Respondent had not applied to EPA for certification and was not listed in EPA's Federal Lead-Based Paint Program ("FLPP") database as a certified firm.

23. Failure to obtain EPA certification prior to performing a renovation for compensation is a violation of 40 C.F.R. § 745.89(a).

24. Respondent's failure or refusal to comply with 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

Failure to Provide Lead Hazard Information Pamphlet
(Count 2)

25. Under 40 C.F.R. § 745.84(b)(1), no more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing the renovation must provide the owner with the EPA "Renovate Right" pamphlet.

26. In the IRL, EPA inquired whether Respondent had provided the "Renovate Right" pamphlet to the owner of the property prior to the start of renovation activity to which Respondent replied "No" in the Response.

27. For the renovation of the 2020 Honeywell Avenue property, Respondent did not provide the "Renovate Right" pamphlet to the owner of the property prior to the start of renovation activity.

28. Failure to provide the "Renovate Right" pamphlet to the owner of the property prior to the start of renovation activity is a violation of 40 C.F.R. § 745.84(b)(1).

29. Respondent's failure or refusal to comply with 40 C.F.R. § 745.84(b)(1)

constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

Failure to Establish and Maintain Records of Compliance
(Count 3)

30. Under 40 C.F.R. §§ 745.86(a) and 745.87(b), firms performing renovations must establish, retain, maintain, and make available to EPA upon request all records necessary to demonstrate compliance with the RRP Rule.

31. In the IRL, EPA inquired whether Respondent had established records documenting that lead-safe work practices were followed to which Respondent replied "No" in the Response.

32. In the IRL, EPA requested that Respondent submit any records documenting that lead-safe work practices were followed. Respondent submitted no compliance documents in response.

33. For the renovation of the 2020 Honeywell Avenue property, Respondent did not establish or maintain records demonstrating compliance with the RRP Rule.

34. Failure to establish retain, maintain, and make available to EPA upon request all records necessary to demonstrate compliance with the RRP Rule is a violation of 40 C.F.R. §§ 745.86(a) and 745.87(b).

35. Respondent's failure or refusal to comply with 40 C.F.R. § 745.86(a) and 40 C.F.R. § 745.87(b) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

Failure to Ensure Certification or Training of All Individuals Performing Renovation Activities
(Count 4)

36. Under 40 C.F.R. § 745.89(d)(1), firms performing renovations must ensure that

all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator.

37. In the IRL, EPA inquired whether Respondent had assigned a certified renovator (as defined by 40 C.F.R. § 745.83) to the job and whether a certified renovator had performed on-the-job training for uncertified workers. In the Response, Respondent replied "No" to each question.

38. For the renovation of the 2020 Honeywell Avenue property, Respondent did not ensure that all individuals performing renovation activities on behalf of the firm were either certified renovators or had been trained by a certified renovator.

39. Failure to ensure that all individuals performing renovation activities on behalf of the firm were either certified renovators or had been trained by a certified renovator is a violation of 40 C.F.R. § 745.89(d)(1).

40. Respondent's failure or refusal to comply with 40 C.F.R. § 745.89(d)(1) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

Failure to Assign Certified Renovator
(Count 5)

41. Under 40 C.F.R. § 745.89(d)(2), firms performing renovations must ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

42. In the IRL, EPA inquired whether Respondent assigned a certified renovator (as defined in 40 C.F.R. § 745.83) to the job to which Respondent replied "No" in the Response.

43. Respondent did not assign a certified renovator to the renovation of the 2020 Honeywell Avenue property.

44. Failure to assign a certified renovator to the renovation job is a violation of 40 C.F.R. § 745.89(d)(2).

45. Respondent's failure or refusal to comply with 40 C.F.R. § 745.89(d)(2) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

ENTRY OF DEFAULT

In the Default Motion, Complainant requests the issuance of an Order assessing liability and penalties against Respondent for the TSCA violations set out in the Complaint.

The Consolidated Rules of Practice provide:

> A party may be found to be in default, after motion, upon failure to file a timely Answer to a complaint. Default by Respondents constitute an admission of all facts alleged in the complaint and a waiver of respondents right to contest such factual allegations. 40 C.F.R. § 22.17(a).

The Consolidated Rules of Practice further provide:

> When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act. 40 C.F.R. §22.17(c).

The Environmental Appeals Board ("EAB") has explained that, though there is a strong preference in the law for cases to be resolved on their merits, the Consolidated Rules of Practice provide for default as an essential tool to prevent litigants from abusing the administrative litigation process. Fulton Fuel Co., CWA Appeal No. 10-03, 2010 EPA App. LEXIS 41, 7-8 (EAB Sept 9, 2010) (citing JHNY, Inc., 12 EAD 372, 385-93 (EAB 2005). Pursuant to 40 C.F.R. Section 22.17(b), where the motion requests the assessment of a penalty. . . against a defaulting

party, the movant must specify the penalty. . . and state the legal and factual grounds for the relief requested.

LIABILITY

The Complaint was properly served on the Respondent. At a minimum, proper service was effectuated when a copy of the Complaint and the Consolidated Rules of Practice were served on Respondent at the Rockville Centre, New York address listed with the New York State Department of State for service of legal papers on the business. The mailing was accepted on September 29, 2018 as documented by a signed return receipt card, a copy of which EPA has provided in its motion. There is also an unrebutted presumption that the March 14, 2019 mailing (with a copy of the Complaint and Consolidated Rules of Practice) reached Respondent's Jamaica, New York business address since the mailing was never returned to EPA. Complainant made two attempts to contact the Respondent as well as his attorney regarding the filing of an Answer. To date, Respondent has not filed an Answer. The failure of the Respondent to file an Answer to the Complaint within the required timeframe makes appropriate the entry of a default against the Respondent.

As a result of its default, the Respondent is deemed to have admitted all facts alleged in the Complaint for purposes of this proceeding and to have waived its right to contest such factual allegations. 40 C.F.R. § 22.17(a). The factual elements alleged against the Respondent in the Complaint provide a proper foundation to establish liability for violations of the requirements alleged in the Complaint. Specifically, I find that Respondent is liable for five violations of Section 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2689, for failing to comply with the regulatory requirements of 40 C.F.R. Part 745 Subpart E, *Residential Property Renovation*, as set out in the Complaint and previously described in this Order.

DETERMINATION OF CIVIL PENALTY AMOUNT

Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides that any person who violates Section 409 of TSCA, 15 U.S.C. § 2689, shall be liable to the United States for a civil penalty of up to $37,500 for each such violation. Each day that such a violation continues constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. § 2614. Acting pursuant to authority in the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, EPA in its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to $48,512 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 27, 2023. The maximum statutory penalty was lower at the time the Complaint was issued ($38,892 per violation) and the penalty sought in the Complaint is well below both the then existing and current statutory maximums.

When assessing a civil penalty under TSCA's provisions, Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires the Administrator to take account the nature, circumstances, extent, and gravity of the violations alleged, as well as Respondent's ability to pay, the effect on its ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

The Consolidated Rules of Practice further provide that the Presiding Officer in an administrative enforcement action —

> Shall determine the amount of the recommended civil penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act. The Presiding Officer shall explain in detail in the initial decision how the penalty to be assessed corresponds to any penalty criteria set forth in the Act. If the Presiding Officer decides to assess a penalty different in amount from the penalty proposed by complainant, the

> Presiding Officer shall set forth in the initial decision the specific reasons for the increase or decrease. If the respondent has defaulted, the Presiding Officer shall not assess a penalty greater than that proposed by complainant in the complaint, the prehearing exchange or the motion for default, whichever is less. 40 C.F.R. §2.27(b).

EPA issued the "Interim Final Policy of August 2010 entitled the "Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair, and Painting Activities Rule" ("Penalty Policy") (as adjusted for inflation) to guide the calculations of civil penalties assessed under TSCA Section 16(a). The penalty amounts in the 2010 Penalty Policy were adjusted for inflation before the Complaint was issued in 2018. See Penalty Policy at: https://www.epa.gov/sites/production/files/2014-01/documents/revisedconsolidated-erppenaltypolicy4513.pdf
After the issuance of the Complaint in September 2018, EPA made further adjustments to the penalty amounts in the Penalty Policy to account for inflation, but the Complainant has not sought to amend the penalty amount in the Complaint.

Under the Penalty Policy, the nature and circumstance of a violation and the extent of harm that may result from a violation are the factors used to determine the gravity-based penalty. The circumstance level reflects the probability that an owner or occupant of target housing will suffer harm based on a particular violation. The Penalty Policy sets forth the circumstance levels for particular violations of the RRP. The extent of harm level of a violation may be characterized as either Major, Significant, or Minor, depending on the degree, range and scope of a violation's potential for childhood lead poisoning. These factors are incorporated into penalty matrices which specify the appropriate gravity-based penalty for each violation (Penalty Policy, Appendix B). Respondent has no history of prior violations and no other adjustment factor in the Penalty Policy was determined to be applicable.

Though the Penalty Policy is not binding upon the Presiding Officer, it must be considered and "should be applied whenever possible because such policies assure that statutory factors are taken into account and are designed to assure that penalties are assessed in a fair and consistent manner." *Carroll Oil Co.,* 10 E.A.D. 635, 656 (EAB 2002) (quoting *M.A. Bruder & Sons, Inc.*, 10 E.A.D. 598, 613 (EAB 2002). Complainant's calculation of the penalties consistent with the Penalty Policy (as adjusted for inflation before the Complaint was issued) specifically applies the civil penalty factors enumerated in the statute to the facts at hand.

Upon review, Complainant's moving papers set forth penalties that are based on the evidence in the record and that are in accord with the statutory penalty criteria set forth in TSCA Section 16(a), with the guidelines of the Penalty Policy, and the calculations as set out in the Complaint are therefore incorporated by reference into this Order.

In conclusion, I assess the proposed penalties against Respondent in the amount of $32,814, for Counts 1 through 5 of the Complaint for violations of TSCA. The proposed penalties are not clearly inconsistent with the record of proceeding or TSCA. *See* 40 C.F.R. § 22.17(c). Accordingly, the proposed penalties mentioned above are assessed against Respondent.

ORDER

For the reasons stated in the motion and based upon my review of the Memorandum of Law in support of said motion, and declarations and exhibits attached therein, an Order of Default is **GRANTED** against the Respondent pursuant to 40 C.F.R. § 22.17(a).

1. Respondent is liable for five violations of TSCA, 15 U.S.C. § 2689, for failing to comply with the regulatory requirements of 40 C.F.R. Part 745 Subpart E.
2. Respondent is assessed a civil administrative penalty in the amount of $32,814.

3. Payment of the full amount of this civil penalty shall be made, (within thirty (30) days of the date on which the Initial Decision becomes a final order pursuant to Section 22.27(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.27(c)), by one of the following means:

   a) By submitting a cashier's check or a certified check in the amount of the penalty, payable to "Treasurer, United States of America," and mailed via U.S. Postal Service to:

      U.S. Environmental Protection Agency
      Fines and Penalties
      Cincinnati Finance Center
      P.O. Box 979078
      St. Louis, Mo. 63197-9000

   b) By submitting a cashier's check or a certified check in the amount of the penalty, payable to "Treasurer, United States of America," and mailed via expedited delivery service (UPS, FedEx, DHL, etc.) to:

      U.S. Environmental Protection Agency
      Government Lockbox 979078
      3180 Rider Trail S.
      Earth City. MO 63045

   c) By on-line payment at www.pay.gov: enter "SFO 1.1" in the search field on the tool bar on the Home Page; select "Continue" under "EPA Miscellaneous Payments - Cincinnati Finance Center" and open the form and complete the required fields.

4. A transmittal letter identifying the subject case and EPA docket number, TSCA-02-2018-9289, as well as Respondent's name and address, must accompany the payment.

5. If Respondent fails to pay the penalty within the prescribed statutory period after entry of the final order, interest on the civil penalty may be assessed. 31 U.S.C. § 3717; 40 C.F.R. § 13.11.

6. Pursuant to 40 C.F.R. § 22.27(c), this Initial Decision shall become a final order forty-five (45) days after its service upon the parties, unless (1) an appeal is taken to the

Environmental Appeals Board within thirty (30) days after service of this Initial Decision pursuant to 40 C.F.R. § 22.30(a); (2) a party moves to set aside the default order pursuant to 40 C.F.R. § 22.17(c); or (3) the Environmental Appeals Board elects to review this Initial Decision upon its own initiative pursuant to 40 C.F.R. § 22.30(b).

SO ORDERED.

Dated: ______________________
New York, New York

____
Helen Ferrara
Regional Judicial Officer