

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

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BEFORE THE ADMINISTRATOR

In the Matter of LHP, LLC

130 N. 27th Street, #6
Lincoln Nebraska

Respondent

Docket No. TSCA-07-2014-0029

ANSWER

NOW COMES, Respondent, LHP, LLC ("Respondent"), by and through its attorneys, DELANEY LAW P.C., and files its Answer to Complainant's Complaint. In support thereof, Respondent states as follows:

JURISDICTION

1. This Complaint and Notice of Opportunity for Hearing (Complaint) serves as notice that the United States Environmental Protection Agency (EPA), Region 7 has reason to believe that Respondent has violated Section 409 of the Toxic Substances 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*, promulgated pursuant to 15 U.S.C. 2682(c), 2686, and 2687.

ANSWER: Respondent lacks sufficient information to either admit or deny.

2. This administrative action for the assessment of civil penalties is instituted pursuant to Section 16(a) of TSCA, 15 U.S.C. 2615(a), and in accordance with the EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Order, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules), a copy of which is enclosed among with this Complaint.

ANSWER: Respondent lacks sufficient information to either admit or deny.

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.

ANSWER: Respondent lacks sufficient information to either admit or deny.

4. Respondent LHP, LLC, is a limited liability company authorized under the laws of the state of Nebraska, performing renovations in the state of Nebraska.

ANSWER: Admitted

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 state 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.

ANSWER: Respondent lacks sufficient information to either admit or deny.

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 renovations of residences built prior to 1978, and regulations for the certification of such individuals and contractors.

ANSWER: Respondent lacks sufficient information to either admit or deny.

7. In 1996, EPA promulgated regulations to implement Section 402(a) of TSCA, 15 U.S.C. § 2682(a). These regulations set forth at 40 C.F.R. Part 745, Subpart L. In 1998, EPA promulgated regulations to implement Section 406(b) and Section 407 of the Act. These regulations 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.

ANSWER: Respondent lacks sufficient information to either admit or deny.

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

ANSWER: Respondent states that the statute speaks for itself.

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, planning thresholds to install weather stripping), and interim controls that disturb painted surfaces.

ANSWER: Respondent states that the statute speaks for itself.

10. 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.

ANSWER: Respondent states that the statute speaks for itself.

11. 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) Pursuant to 40 C.F.R § 745.85(a)(1), a renovation firm, before beginning the renovation, must post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activation to remain outside of the work area and the signs must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed.

ANSWER: Respondent states that the statute speaks for itself.

- (b) Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(A), the renovation firm, before beginning the renovation, must close all doors and windows within 20 feet of the renovation;

ANSWER: Respondent states that the statute speaks for itself.

- (c) Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(B), the renovation firm, before beginning the renovation, must ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

ANSWER: Respondent states that the statute speaks for itself.

(d) Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), the renovation firm, before beginning the renovation, must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering; and

ANSWER: Respondent states that the statute speaks for itself.

(e) Pursuant to 40 C.F.R. § 745.85(a)(4)(i), the renovation firm must contain waste to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.

ANSWER: Respondent states that the statute speaks for itself.

17. 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. § 2615(a) and 40 C.F.R. § 745.85(d).

ANSWER: Respondent lacks sufficient information to either admit or deny.

18. Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.85(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.

ANSWER: Respondent lacks sufficient information to either admit or deny.

GENERAL FACTUAL ALLEGATIONS

19. Respondent, at all times referred to herein, was a person as defined in 40 C.F.R § 745.83.

ANSWER: Admitted

20. Respondent, at all times referred to herein, was a "firm" as defined in 40 C.F.R § 745.83.

ANSWER: Admitted

21. Presently, and at the time of the actions described herein, Respondent, is a limited liability company authorized under the laws of the state of Nebraska, doing business in the state of Nebraska.

ANSWER: Admitted

22. Respondent was a certified renovator and certified firm performing renovations on a residential property located at 800 A Street, Lincoln, Nebraska (Property).

ANSWER: Admitted

23. At all times relevant to this Complaint, the renovation project at said residential property was a "renovation for compensation" subject to the RRP Rule per 40 C.F.R. § 745.82.

ANSWER: Denied.

24. On November 9, 2012, pursuant to its authority under Section 11 of TSCA, 15 U.S.C. § 2610, United States Environmental Protection Agency, Region 7 conducted work practice inspection at the work sites at the Property to evaluate Respondent's compliance with the RRP Rule. A copy of the inspection report was mailed to Respondent on January 14, 2013.

ANSWER: Denied.

25. At the time of inspection, referenced above, there were no children present at the Property. The Property was a circa 1908 residential property. The Property was constructed before 1978 and its target housing as defined by 40 C.F.R. § 745.103.

ANSWER: Admit there were no children present on November 9, 2012; admit the property was constructed before 1978; deny any and all remaining allegations in this paragraph.

26. As a result of the inspection and additional information obtained by EPA, Complainant has identified the following violations 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.

ANSWER: Denied.

ALLEGED VIOLATIONS

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

COUNT ONE

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

ANSWER: Each and every preceding answer is incorporated by reference herein.

29. Pursuant to 40 C.F.R § 745.85(a)(1), a renovation firm, before beginning the renovation, must post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activation to remain outside of the work area and the signs must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed.

ANSWER: Respondent states that the statute speaks for itself

30. Respondent, at the time of the November 9, 2012, inspection of the above property, did not have posted signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside of the work area.

ANSWER: Denied

31. Respondent's failure to post signs or maintain the signs in place clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside of the work area constitutes a violation of 40 C.F.R. § 745.85(a)(1). Respondent therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

ANSWER: Denied

COUNT TWO

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

ANSWER: Respondent reasserts its answers in paragraphs 1-27 as its answer to this paragraph as though fully set forth herein

33. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(A), the renovation firm, must close all doors and windows within 20 feet of the renovation.

ANSWER: Respondent states that the statute speaks for itself

34. Respondent, at the time of the November 9, 2012 inspect of the above property, had failed to close doors and windows within 20 feet of the renovation.

ANSWER: Denied

35. Respondent's failure to close all doors and windows within 20 feet of the renovation constitutes a violation of 40 C.F.R. § 745.85(a)(2)(ii)(A). Respondent therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

ANSWER: Denied

COUNT THREE

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

ANSWER: Each and every preceding answer is incorporated by reference herein.

37. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(B), the renovation firm must ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

ANSWER: Respondent states that the statute speaks for itself

38. Respondent, at the time of the November 9, 2012 inspection of the above property, had failed to ensure that doors with the work area that were used while the job was being performed were covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

ANSWER: Denied

39. Respondent's failure to ensure that the doors with the work area that were used while the job was being performed were covered with plastic sheeting or other impermeable material in a manner that allows workers were covered with plastic. Respondent therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

ANSWER: Denied

COUNT IV

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

ANSWER: Respondent reasserts its answers in paragraphs 1-27 as its answer to this paragraph as though fully set forth herein

41. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), the renovation firm, before beginning the renovation, must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing

renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering.

ANSWER: Respondent states that the statute speaks for itself

42. Respondent, at the time of the November 9, 2012, inspection of the above property, had failed to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces of undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, and the property line did not prevent 10 feet of such good covering.

ANSWER: Denied

43. Respondent's failure to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering constitutes a violation of 40 C.F.R. § 745.85(a)(2)(ii)(C). Respondent therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

ANSWER: Denied

COUNT V

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

ANSWER: Each and every preceding answer is incorporated by reference herein.

45. Pursuant to C.F.R. § 745.85(a)(4)(i), the renovation firm must ensure that 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.

ANSWER: Respondent states that the statute speaks for itself

46. Respondent, at the time of November 9, 2012 inspection of the above property, had failed to contain waste from renovation activities to prevent the release of dust and debris before the waste was removed from the work are for storage or disposal.

ANSWER: Denied

47. Respondent's failure to contain waste from renovation activities and failure to prevent the release 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. § 745.85(a)(4)(i). Respondent therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

ANSWER: Denied

ANY REMAINING ALLEGATIONS THAT WERE NOT SPECIFICALLY DENIED ABOVE ARE HEREBY DENIED

RELIEF

48. Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615 for violation 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.

ANSWER: Denied

49. 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 up to \$25,000 for each violation of Section 409 of TSCA. Each day that such a violation continues 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.

ANSWER: Respondent answers that the statute speaks for itself

50. 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 Respondent: (a) its ability to pay, (b) the effect on its 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.

ANSWER: Respondent lacks sufficient information to either admit or deny.

51. 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-six Thousand Eight Hundred and Forty Dollars (\$26,840) for the TSCA violations alleged in this Complaints (See Attachment 1 to this Complaint explaining the reasoning for this penalty).

ANSWER: Respondent lacks sufficient information to either admit or deny.

52. 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 Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty.

ANSWER: Respondent lacks sufficient information to either admit or deny.

ANY REMAINING ALLEGATIONS THAT WERE NOT SPECIFICALLY DENIED ABOVE ARE HEREBY DENIED

WHEREFORE, Respondent, LHP LLC, respectfully requests that Complainant's Complaint be dismissed with prejudice and a judgment in favor of this Respondent be entered with costs.

Respectfully Submitted,

LHP LLC

By: 
One of Its Attorneys

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