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July 27, 2013

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, MA 02109-3912

Re: Docket #TSCA-01-2013-0036

Dear Wanda;

James J. Welch & Co., Inc. is in receipt of an alleged violation of the Toxic Substances Control Act by your office, specifically the RRP Rules.

James J. Welch & Co., Inc. submits the following answer to the complaint. Additionally, going forward, James J. Welch & Co., Inc. will be referred to as "JJW."

JJW takes exception to the Statutory and Regulatory Background finding in Item #4, that this building is a "child occupied facility."

JJW takes exception to the General Allegations, Item #11, that JJW is "the firm".

JJW takes exception to the General Allegations, Item #18.

JJW insists that, on the General Allegations, Item #21, NH glass was a "Certified Firm", not a renovator.

JJW does not believe that on the General Allegations, Item #23, that a ME DEP inspector performed lead paint tests.

JJW does not believe that on the General Allegations, Item #24, the EPA and the ME DEP visited the facility to evaluate this respondent's compliance. JJW does not believe that Mr. Crook said he had sent a copy of the Ransom Report to NH Glass.

JJW insists that on the General Allegations, Item #27, (after that sentence) it should be noted that JJW followed RRP rules in the completion.

III Violation Count 1

Item #30; JJW believes that “the firm” is NH Glass and JJW hired them as such, relieving JJW in performing any of the work as “the firm” prior to NH Glass stopping work. After NH Glass stopped work, JJW became “the firm,” and performed the remaining few window removals with certified renovators following the RRP Rules.

Item #31; JJW believes the “the renovator” is the employee of NH Glass before NH Glass stopped work, not JJW. When JJW finished the remaining few windows, it was performed with certified renovators following the RRP rules.

Item #33; JJW believes that NH Glass is “the firm” and must ensure that the ground be covered per the RRP rule prior to NH Glass stopping work. When JJW finished the remaining few windows, it was performed with certified renovators following the RRP rules.

Item #34; JJW believes that NH Glass must ensure that the waste be handled to the dumpster for disposal per the RRP rule prior to them stopping work. When JJW finished the remaining few windows, it was performed with Certified Renovators following the RRP rules.

Item #35; JJW believes JJW should not be the respondent as NH Glass is “the firm,” and may have violated Section 409 of TSCA. Prior citations and actions by the EPA to NH Glass on this very project buttresses that belief.

JJW had requested, and the EPA had agreed (in a conference call on 3/22/13) that any disposition of the NH Glass case would be forwarded to JJW. To this day this has not happened. JJW feels that, if any judgment of the \$90,750. was reduced by the EPA’s negotiations with NH Glass, then this action has been brought against JJW to make up any difference not expected to be placed in the EPA Coffers.

IV Proposed Penalty

Item #36; JJW believes that the proposed penalty greatly exceeds the “nature, circumstances, extent of the violation, and the respondent’s ability to pay, continue to do business, history, degree of culpability,” and believes that JJW should be commended in the immediate action taken when a hired “certified firm” may have skirted the RRP rule as the EPA felt fit in bringing an action against NH Glass.

JJW believes that Item #37 (\$28,125.) is not the obligation of JJW.

JJW requests a hearing in this matter, Per Item #38.

Item #39, JJW’s answer denies the allegations as stated above.

JJW believes that the EPA, in its initial investigation of the project, was correct in writing the violation to NH Glass as “the firm,” not JJW. The EPA has taken almost verbatim the Complaint originally issued to NH Glass and inserted James J. Welch & Co., Inc. as the respondent. We also believe that NH Glass’ proposed penalty of \$90,750. is excessive and stated such in the phone conversation with Andrea Simpson, while the EPA was negotiating with NH Glass on this particular matter. Although JJW is a Certified Firm, and requests by Jamie DeSousa of the EPA for documentation to forward documents as such, along with the documents that JJW has under its employ Certified Renovators, JJW relieved all of its duties as “the firm” when they contracted with a “Certified Firm” to perform the work and JJW had no obligation under the RRP rule as a firm until NH Glass stopped work.

JJW also believes that there may be a statute of limitation regarding these allegations, and may use that as a defense. If in fact JJW is required to defend itself on this complaint before a court, JJW reserves the right to take the same time that the EPA has taken from the beginning of its investigation to the time it deemed fit to file a complaint (462 days).

Not admitting responsibility for the violation, JJW feels that it has already performed SEP’s for the EPA as described in this EPA matter, by removing the chips that were found on the ground after NH Glass removed windows.

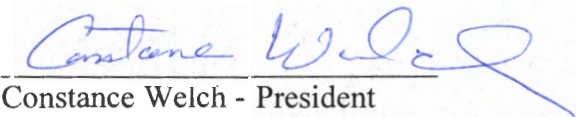
JJW incorporates into this answer the following items:

- EPA complaint against NH Glass, dated 1-31-13
- Three (3) emails from Jamie DeSousa, dated 3-21-13
- One (1) email from Jamie DeSousa, dated 3-20-13
- Certified USPS mail EPA letter Docket No. TSCA-AL-2012-031
- JJW submitted items to the EPA at the request of Jamie DeSousa (i.e. corporate license, and certified renovator licenses of Gary Lariviere and David “Butch” Crook).

Respectfully submitted on the behalf of Constance Welch by:



David “Butch” Crook



Constance Welch - President
James J. Welch & Co., Inc.

cc: Andrea Simpson
Senior Enforcement Council
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, MA 02109-3912

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

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2013 AUG -5 A 11:14

In the Matter of:)
)
New Hampshire Plate Glass Corp.)
1 Mirona Road)
Portsmouth, New Hampshire 03801)
)
Respondent.)
)
Proceeding under Section 16(a) of the)
Toxic Substances Control Act,)
42 U.S.C. § 2615(a))
)

Docket No. TSCA-01-2013-0010

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK
WS

COMPLAINT AND
NOTICE OF
OPPORTUNITY FOR
HEARING

COMPLAINT

I. STATUTORY AND REGULATORY BACKGROUND

1. This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Complainant is the Legal Enforcement Manager of the Office of Environmental Stewardship, U.S. Environmental Protection Agency (“EPA”), Region 1. Respondent, New Hampshire Plate Glass Corp. (“NH Glass” or “Respondent”), is hereby notified of Complainant’s determination that Respondent has violated Sections 15 and 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. § 4851 et seq., and the federal regulations promulgated thereunder, entitled “Residential Property Renovation,” as set forth at 40 C.F.R. Part 745, Subpart E.

Complainant seeks civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides that violations of Section 409 of TSCA are subject to the assessment by Complainant of civil and/or criminal penalties.

2. In 1992, Congress passed the Act in response to findings that low-level lead poisoning is widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint, and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. 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.

3. 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”).

4. 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” and “child-occupied facilities.” “Target housing” is defined as any housing constructed prior to

1978, except housing for the elderly or disabled (unless any child who is less than six years old resides or is expected to reside in such housing), or any 0-bedroom dwelling. Child-occupied facility is defined as a building or portion of a building, constructed prior to 1978, visited regularly by the same child, under six years of age, on at least two different days with in any week . . . provided that each day's visit lasts at least 3 hours and the combined weekly visit lasts at least six hours, and the combined annual visits last at last 60 hours. 40 C.F.R. § 745.83. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. They may be located in target housing or in public or commercial buildings. 40 C.F.R. § 745.83

5. 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.

6. Pursuant to Section 409 of TSCA, it is unlawful for any person to fail to comply with any rule issued under Subchapter IV of TSCA (such as the RRP Rule). Pursuant to 40 C.F.R. § 745.87(a), the failure to comply with a requirement of the RRP Rule is a violation of Section 409 of TSCA. Pursuant to 40 C.F.R. § 745.87(b), the failure to establish and maintain the records required by the RRP Rule is a violation of Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

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

8. Section 16(a) of TSCA and 40 C.F.R. § 745.87(d) authorize the assessment of a civil penalty of up to \$25,000 per day per violation of the RRP Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 through January 12, 2009, are subject to penalties up to \$32,000 per day per violation. Violations that occur on or after January 13, 2009, are subject to penalties up to \$37,500 per day per violation. See 73 Fed. Reg. 75340 (December 11, 2008).

II. GENERAL ALLEGATIONS

9. Respondent is a corporation registered in New Hampshire with its principal place of business located at 1 Mirona Road, Portsmouth, New Hampshire. Respondent provides automotive, residential and commercial glass products and services in northern New England.

10. On or about August 18, 2011, NH Glass entered into a contract with James J. Welch & Co., Inc. ("JJ Welch") to conduct window renovations as part of the Frisbee School Revitalization Project in Kittery, Maine. JJ Welch was the general contractor for the renovation project. The project involved converting a former school into a community center.

11. At the time of the renovation, there were two connected buildings that comprised the school - the original building, where the renovation occurred, and the annex ("Facility"). The original building was built in 1941 and the annex was built in 1951.

12. At the time of the renovation, a Head Start Program and the Kittery Recreation Department Childcare Programs were located in the annex building. Upon

completion of the renovation project, the Kittery Recreation Department Childcare Programs were moved into the newly renovated portion of the Facility.

13. At all times relevant to this Complaint, the Facility was a “child-occupied facility,” as defined in 40 C.F.R. § 745.83. Furthermore, the Facility did not satisfy the requirements for an exemption to the provisions of TSCA or the RRP Rule.

14. Respondent successfully completed an accredited course regarding the RRP Rule in February 2010, and at all times relevant to this Complaint, Respondent was a certified firm pursuant to 40 C.F.R. § 745.89.

15. Between September 2011 and February 2012, Respondent removed and replaced approximately 70 windows at the Facility.

16. At all times relevant to this Complaint, the window replacement project at the Facility was a “renovation,” as defined in 40 C.F.R. § 745.83.

17. At all times relevant to this Complaint, the window replacement project at the Facility was a “renovation for compensation” subject to the RRP Rule. See 40 C.F.R. § 745.82. Furthermore, the window replacement project at the Facility did not satisfy the requirements for an exemption to the provisions of TSCA or the RRP Rule.

18. At all times relevant to this Complaint, Respondent was a “firm,” as defined in 40 C.F.R. § 745.83.

19. In a report dated April 18, 2011, Ransom Environmental Consultants, Inc. documented that paint surfaces in the former Frisbee School building, including windows, contained lead-based paint above 1.0 milligrams per square centimeter.

20. On February 14, 2012, an inspector from the Maine Department of Environmental Protection (“ME DEP”) visited the Facility after receiving a complaint

indicating that lead paint may be present at the Facility posing a risk to children attending day care programs there. The inspector conducted a lead test and determined that lead-based paint existed at the Facility.

21. On February 23, 2012, inspectors from EPA Region 1 and the ME DEP conducted an inspection of the Facility to evaluate Respondent's compliance with the RRP Rule. During the inspection, the EPA and ME DEP inspectors interviewed the JJ Welch Project Manager, David Crook, and Nick Raitt, the foreman for NH Glass. Mr. Crook stated that he had received a copy of the report prepared by Ransom Environmental Consultants, Inc. and had sent a copy to NH Glass. However, Mr. Raitt stated he had been told by an employee of JJ Welch that no lead was present in the building. He also stated that he did not follow any of the RRP Rule requirements during the window replacement project.

22. Mr. Crook stated that around the beginning of February 2012, he observed NH Glass removing window trim without containment and immediately halted the window renovations. Approximately 70 windows had been replaced prior to the work stoppage. Mr. Raitt confirmed that this information was true.

23. During the window replacement project, Nick Raitt and Roy Palmer acted as foremen for NH Glass. Neither Mr. Raitt nor Mr. Palmer were certified renovators, pursuant to 40 C.F.R. § 745.90, at the time of the window replacement project.

24. After NH Glass stopped work on the project, JJ Welch completed the project and conducted clean up of paint chips in the soil.

25. As a result of the inspection, 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 at 40 C.F.R. Part 745, Subpart E.

III. VIOLATIONS

Count 1 - Failure to Assign Certified Renovators

26. Complainant incorporates by reference paragraphs 1 through 25.

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

28. At all times relevant to this Complaint, NH Glass employed two foremen, Nick Raitt and Roy Palmer, who were not certified renovators, to supervise window replacement work at the Facility.

29. Respondent's failure to assign certified renovators to the renovation project at the Facility constitutes a violation of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA.

Count 2 - Failure to Cover Ground with Plastic Sheeting

30. Complainant incorporates by reference paragraphs 1 through 29.

31. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), for exterior renovations, firms 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.

32. While performing window replacements at the Facility, Respondent did not cover the ground with plastic sheeting or other impermeable material covering the ground in the work area of the renovation project to collect falling paint debris.

33. 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, for the renovation project at the Facility constitutes a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(ii)(C) and Section 409 of TSCA.

Count 3 – Failure to Contain Waste from Renovation Activities

34. Complainant incorporates by reference paragraphs 1 through 33.

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

36. Respondent did not use any means of containment to prevent releases of dust and debris during the renovation project at the Facility.

37. Respondent's failure to contain the waste from the renovation project at the Facility 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) and 745.85(a)(4)(i) and Section 409 of TSCA.

IV. PROPOSED PENALTY

38. In determining the amount of any penalty to be assessed, 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 such other matters as justice may require.

39. 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 ninety-thousand seven hundred fifty dollars (\$90,750) for the TSCA violations alleged in this Complaint. (See Attachment I to this Complaint explaining the reasoning for this penalty.) The provisions violated and the corresponding penalties are as follows:

PROVISION	REQUIREMENT	PENALTY
Failure to Assign Certified Renovator	40 C.F.R. § 745.89(d)(2)	\$22,500
Failure to Cover Ground With Plastic Sheeting	40 C.F.R. § 745.85(a)(2)(ii)(C)	\$30,000

Failure to Contain Waste	40 C.F.R. § 745.85(a)(4)(i)	\$30,000
Adjustment Factors:	Culpability 10%	\$8,250
Total Penalty		\$90,750

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

40. As provided by Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and in accordance with 40 C.F.R. § 22.14, Respondent has a right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. Any request for a hearing must be included in

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respond accordingly to the allegations, and to provide whatever additional information

submitted in order to avoid becoming subject to default.



Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region 1

1/31/13
Date

ATTACHMENT 1 TO COMPLAINT

In the Matter of New Hampshire Glass Corporation
Docket Number TSCA-01-2013-0010

PROPOSED PENALTY SUMMARY

Pursuant to EPA's August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* ("LBP Consolidated ERPP"), EPA proposes a civil penalty in the amount of \$90,750 to be assessed against New Hampshire Glass Corporation as follows¹:

COUNT 1. Failure to Assign Certified Renovators

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

Circumstance Level: The failure to ensure that a certified renovator is assigned to the renovation results in a high probability of a renovation firm failing to comply with the work practice standards of 40 C.F.R. § 745.85. As a result, under the LBP Consolidated ERPP Appendix A, a violation of 40 C.F.R. § 745.107(a)(1) is a *Level 3a* violation.

Extent of Harm: The LBP Consolidated ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

¹ Section 16(a) of TSCA and 40 C.F.R. § 745.87(d) authorize the assessment of a civil penalty of up to \$25,000 per day per violation of the RRP Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 through January 12, 2009, are subject to penalties up to \$32,000 per day per violation. Violations that occur on or after January 13, 2009, are subject to penalties up to \$37,500 per day per violation. See 73 Fed. Reg. 75340 (December 11, 2008).

Respondent failed to assign a certified renovator to the renovation project.

COUNT 2. Failure to Cover Ground with Plastic Sheeting

Provisions Violated: 40 C.F.R. § 745.89(d)(3), requires firms performing renovations to ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), for exterior renovations, firms 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.

Circumstance Level: The failure to apply proper ground cover results in a high probability that lead dust and debris will contaminate surrounding soils. As a result, under the LBP Consolidated ERPP Appendix A, a violation of 40 C.F.R. § 745.85(a)(2)(ii)(C), is a *Level 2a* violation.

Extent of Harm: The LBP Consolidated ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

Respondent failed 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, for the renovation project.

COUNT 3. Failure to Contain Waste from Renovation Activities

Provision Violated: 40 C.F.R. § 745.89(d)(3), requires firms performing renovations to ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. 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.

Circumstance Level: The failure to contain waste from a renovation project results in a high probability of the release of lead dust and debris to the air and surrounding soils. As a result, under the LBP Consolidated ERPP Appendix A, a violation of 40 C.F.R. § 745.85(a)(4)(i), is a *Level 2a* violation.

Extent of Harm: The LBP Consolidated ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

Respondent failed to contain waste from renovation activities to prevent release of dust and debris.

The total penalty was increased by 10% for culpability because Respondent is a certified firm and should have known of the RRP requirements.

Cheryl Luzinski

From: Butch Crook [butchcrook@jjwelch.com]
Sent: Tuesday, July 30, 2013 3:02 PM
To: 'Cheryl Luzinski'
Subject: FW: Complaint - NH Glass

Please print

From: DeSousa, Jaime [mailto:Desousa.Jaime@epa.gov]
Sent: Thursday, March 21, 2013 3:10 PM
To: Butch Crook
Cc: 'Mike Welch'; garylariviere@jjwelch.com; Simpson, Andrea
Subject: RE: Complaint - NH Glass

Sounds good. Andrea and I will call you and Gary at 10 am tomorrow (Friday, March 22, 2013).

Thank you.

--
jaime

From: Butch Crook [mailto:butchcrook@jjwelch.com]
Sent: Thursday, March 21, 2013 11:03 AM
To: DeSousa, Jaime
Cc: 'Mike Welch'; garylariviere@jjwelch.com; Simpson, Andrea
Subject: RE: Complaint - NH Glass

We will discuss the 3 counts tomorrow then.

From: DeSousa, Jaime [mailto:Desousa.Jaime@epa.gov]
Sent: Thursday, March 21, 2013 10:57 AM
To: Butch Crook
Cc: 'Mike Welch'; garylariviere@jjwelch.com; Simpson, Andrea
Subject: RE: Complaint - NH Glass

Butch,

Our attorney, Andrea Simpson believes it would be helpful to talk on Friday, even if solely to explain the process to you. She is better seasoned to do so.

I've cc'd her on this email.

--
Jaime

From: Butch Crook [mailto:butchcrook@jjwelch.com]
Sent: Thursday, March 21, 2013 10:15 AM
To: DeSousa, Jaime

Cc: 'Mike Welch'; garylariviere@jjwelch.com
Subject: RE: Complaint - NH Glass

Jamie;

If they haven't answered the complaint then what would be resolved?

Is the EPA in the process of settling the case prior to NH Glass' answer as is suggested below?

Once they have answered the complaint, then I it would be protocol to research their answer by further information gathering to either acknowledge or dispute the answer and resolve the case, not before.

We would like to see that answer.

Butch

From: DeSousa, Jaime [<mailto:Desousa.Jaime@epa.gov>]
Sent: Thursday, March 21, 2013 9:54 AM
To: Butch Crook
Cc: 'Mike Welch'; garylariviere@jjwelch.com
Subject: RE: Complaint - NH Glass

Butch,

NH Glass has received an extension to the deadline for filing their answer as we are in settlement negotiations with NH Glass.

Having this conference call with you and Gary will help us resolve the case with NH Glass.

Thanks you.

--

Jaime DeSousa

Environmental Scientist
Toxics and Pesticides Unit
U.S. EPA - Region 1 (New England)
5 Post Office Square, Suite 100
Mail Code OES05-4
Boston, MA 02109-3912

Phone: (617) 918-1183 | Fax: (617) 918-0183
e-Mail: desousa.jaime@epa.gov

From: Butch Crook [<mailto:butchcrook@jjwelch.com>]
Sent: Wednesday, March 20, 2013 6:17 PM
To: DeSousa, Jaime
Cc: 'Mike Welch'; garylariviere@jjwelch.com
Subject: RE: Complaint - NH Glass

Jamie;

We spoke on the phone today.

Thank you for forwarding the complaint.

You have asked for a telephone conference with Gary LaFerriere and myself for Friday at 10 am.

Our telephone conversation today revealed that your work duty was to gather the information and then pass it on to the next level for their determination.

I believe that on February 23, 2012 the region conducted a gathering of information and performed subsequent gathering prior to the signed complaint on 1/31/13.

The Respondent had 30 days to answer the complaint (by 3/2/13).

Today it has been 18 days since that deadline for a response.

If they have responded, please include that response to me at my email Butchcrook@jjwelch.com.

If they have not please indicate that and I believe that they would have defaulted per the regulations.

Should we have a phone conversation it will be specific to the three alleged violations and our observances of NH Glass.

- Count 1: That NH Glass failed to assign certified renovators, and individuals performing the work were not trained renovators or trained by Certified renovators.
- Count 2: That NH Glass failed to cover the ground for a distance of 10' or a greater distance to contain debris.
- Count 3: That NH Glass failed to contain debris containing lead.

We believe that discussing any other item other than the above in over a year's time would not be in the best interest of NH Glass or any other party, especially in light that the information gathering period should be completed with the above 3 determinations.

We will await the response from NH Glass from you before we schedule a phone conversation.

Respectfully;

Butch Crook

From: DeSousa, Jaime [<mailto:Desousa.Jaime@epa.gov>]

Sent: Wednesday, March 20, 2013 10:09 AM

To: butchcrook@jjwelch.com

Subject: FW: Complaint - NH Glass

From: DeSousa, Jaime

Sent: Wednesday, March 20, 2013 10:05 AM

To: butchcrook@jjwelch.com

Cc: Simpson, Andrea

Subject: Complaint - NH Glass

Butch,

Attached is a copy of the signed complaint given to NH Glass.

Let me know if you have any question and if you can join us on a conference call on **Friday, March 22, 2013 at 10am.**

--

Jaime DeSousa

Environmental Scientist
Toxics and Pesticides Unit
U.S. EPA - Region 1 (New England)
5 Post Office Square, Suite 100
Mail Code OES05-4
Boston, MA 02109-3912

Phone: (617) 918-1183 | Fax: (617) 918-0183
e-Mail: desousa.jaime@epa.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Docket No. TSCA-AL-2012-031

OCT 30 2012

Ms. Constance Welch
James J. Welch & Company, Inc.
27 Congress Street, Ste 513
Salem, MA 01970-5523

Re: EPA Advisory of Deficiencies in Compliance with the Renovation, Repair, and Painting and Pre-Renovation Rules

Dear Ms. Constance Welch:

The New England Office of the U. S. Environmental Protection Agency ("EPA") has completed a review of the information gathered during an inspection on February 23, 2012 concerning work you performed at the Frisbee School Revitalization Project located at 120 Rogers Road in Kittery, Maine. EPA Inspectors Alec Aman, Eric Hall and Jaime DeSousa conducted the inspection to determine compliance with the EPA regulations entitled Residential Property Renovation, codified at 40 C.F.R. Part 745, Subpart E. This Subpart encompasses the Renovation, Repair, and Painting ("RRP") Rule and the amended Pre-Renovation Education ("PRE") Rule.

The **RRP Rule**, effective April 22, 2010, covers any activity that disturbs more than six square feet of interior or 20 square feet of exterior painted surface at pre-1978 housing and child-occupied facilities. Among other things, the RRP Rule requires contractors, trades-people, rental property managers, owners and other firms who disturb painted surfaces (even if it is not known whether the paint contains lead) to:

- be a certified firm and/or a certified renovator;
- use lead-safe work practices as required by the RRP Rule, for example:
 - post warning signs at the entrance to the work area;
 - use plastic containment barriers to prevent the spread of dust that may potentially contain lead;
 - handle waste in a lead-safe manner;

Toll Free • 1-888-372-7341

Internet Address (URL) • <http://www.epa.gov/region1>

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- use power tools with a High Efficiency Particulate Air (“HEPA”) exhaust control when removing lead-based paint by sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting;
- do not use prohibited practices such as open-flame burning, torching, or operating a heat gun at over 1100°F;
- make sure that the work site is properly cleaned and that a post-renovation cleaning verification or dust clearance testing is conducted; and
- establish RRP project records that document and demonstrate compliance with the RRP Rule and maintain these records for at least three years.

The related **PRE Rule**, requires contractors, trades-people, rental property managers, owners and others who perform renovations for compensation at pre-1978 housing and child-occupied facilities that disturb more than six square feet of interior or 20 square feet of exterior painted surface (even if it is not known whether the paint contains lead) to:

- provide the property owners and occupants with the EPA pamphlet entitled “*Renovate Right*” before renovation starts;
- obtain confirmation of receipt of the EPA pamphlet from the owner and occupants or a certificate of mailing from the post-office;
- provide written notice describing the planned renovation to each affected unit for work in common areas of multi-family housing; and
- retain PRE Rule records for three years.

A contractor, property owner, manager, or other renovator who has failed to comply with PRE Rule or the RRP Rule requirements has violated TSCA Section 409, 15 U.S.C. § 2689, and is liable for civil penalties under TSCA Section 16, 15 U.S.C. § 2615.

During the February 23, 2012 inspection, EPA Inspectors Aman, Hall and DeSousa discussed with employees of James J. Welch & Company, Inc., the background and nature of the renovation activities at the Frisbee School Revitalization Project located at 120 Rogers Road in Kittery, Maine. Based on that inspection and subsequent EPA examination, deficiencies have been identified regarding your compliance with the RRP Rule. The specific Rule sections included are:

- 40 C.F.R. §745.89(d)(1) requiring that all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with §745.90; and
- 40 C.F.R. §745.89(d)(2) requiring 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.

As discussed during the inspection, we recommend you address these issues by ensuring that:

- All individuals performing renovation activities on behalf of James J. Welch & Company, Inc. are either certified renovators or have been trained by a certified renovator in accordance with §745.90; and
- A certified renovator is assigned to each renovation performed by James J. Welch & Company, Inc. and discharges all of the certified renovator responsibilities identified in §745.90.

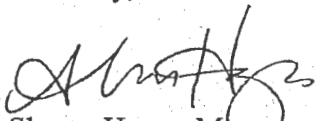
Please be advised that on July 15, 2011, EPA issued a final rule in the Federal Register announcing the following amendments to the RRP rule: a provision allowing a certified renovator to collect a paint chip sample and send it to a recognized laboratory for analysis; a requirement that vertical containment or equivalent extra precautions be used on exterior renovations occurring within 10 feet of the property line; minor changes to the training program accreditation application process; standards for e-learning in accredited training programs; minimum enforcement provisions for authorized state and tribal renovation programs; minor revisions to the training and certification requirements for renovators; and clarifications to the prohibited or restricted work practice provisions and to the requirements for high-efficiency particulate air (HEPA) vacuums. The 2011 changes to the RRP Rule can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2011-08-05/pdf/2011-19417.pdf>.

Issuance of this advisory does not preclude EPA from pursuing any other remedies or sanctions authorized by law at any time in the future. Such sanctions may include suspension, revocation or modification of your individual and/or firm certifications or the assessment of civil and/or criminal penalties.

No further information is requested at this time. If you have any question regarding this advisory, please contact Jaime DeSousa at (617) 918-1183.

Thank you.

Sincerely,



Sharon Hayes, Manager
Toxics and Pesticides Unit
Office of Environmental Stewardship
US EPA-New England

Enclosure: Compliance Assistance Packet

cc: Jim Bryson, US EPA-New England
John Bucci, Maine Department of Environmental Protection

United States Environmental Protection Agency



This is to certify that

James J. Welch & Co., Inc.

has fulfilled the requirements of the Toxic Substances Control Act (TSCA) Section 402, and has received certification to conduct lead-based paint renovation, repair, and painting activities pursuant to 40 CFR Part 745.89

In the Jurisdiction of:

All EPA Administered States, Tribes, and Territories

This certification is valid from the date of issuance and expires September 15, 2015

NAT-74337-1

Certification #

September 1, 2010

Issued On

Michelle Price, Chief

Lead, Heavy Metals, and Inorganics Branch



University of Cincinnati

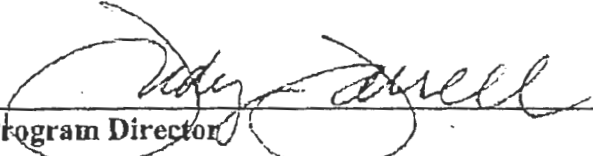
Occupational Health & Safety Continuing Education Program Co-Sponsored by Environmental Training Institute, LLC

DAVID CROOK

151 Stackyard Road
Rowley, MA 01969



Has Successfully Completed the
Lead Safety for Renovation, Repair and Painting Initial Course



Program Director

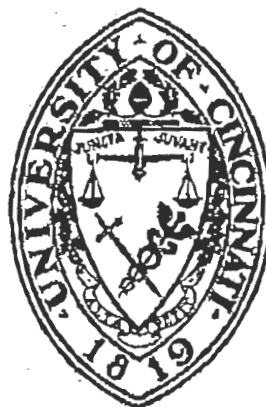
R-I-18459-10-04128


Certificate Number

September 14, 2010

Issue Date

Language – English





Course Principal Instructor

.8

Continuing Education Units

September 9, 2010

Course Date

Occupational Health & Safety Continuing Education, UC Reading Campus, 2180 E. Galbraith Rd., ML 0510, Cincinnati, OH 45237-1625, (513)558-1730,
www.eh.uc.edu/hscce

University of Cincinnati

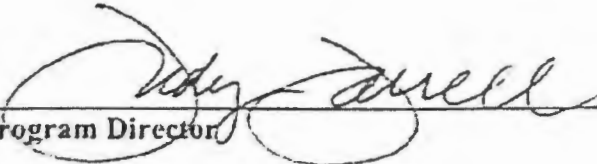
Occupational Health & Safety Continuing Education Program
Co-Sponsored by Environmental Training Institute, LLC

GARY LARIVIERE

134 Main Avenue
S. Hampton, MA 03827



Has Successfully Completed the
Lead Safety for Renovation, Repair and Painting Initial Course



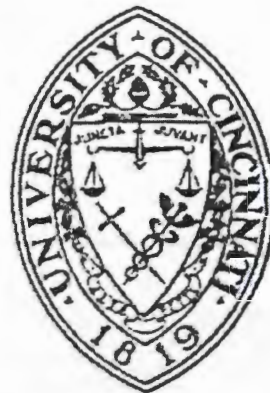
Program Director

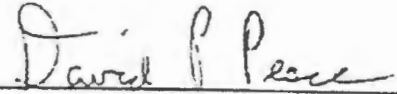
R-I-18459-10-04237

Certificate Number

September 29, 2010

Issue Date Language – English





Course Principal Instructor

.8

Continuing Education Units

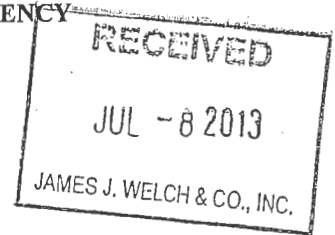
September 25, 2010

Course Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912



CERTIFIED MAIL
RETURN RECEIPT REQUESTED

July 3, 2013

Constance Welch, President
James J. Welch & Co., Inc.
27 Congress Street, Suite 513
Salem, Massachusetts 01970

Re: In the Matter of: James J. Welch & Co., Inc;
Docket No. TSCA-01-2013-0036

Dear Ms. Welch:

Enclosed is a Complaint and Notice of Opportunity for Hearing ("Complaint") seeking penalties for a violation of Section 409 of the Toxic Substances Control Act, 42 U.S.C. § 7412 and the Residential Lead Based Paint Hazard Reduction Act of 1992. Specifically, the violation involves the failure of James J. Welch & Co., Inc. ("JJ Welch") to ensure compliance with the work practice standards of the Renovation, Repair and Painting Rule ("RRP Rule") set forth in 40 C.F.R. Part 745, Subpart E. EPA is seeking a penalty of \$28,125 for this violation.

On February 23, 2012, authorized representatives of the Environmental Protection Agency, Region I ("EPA") and the Maine Department of Environmental Protection conducted an inspection at the former Frisbee School in Kittery, Maine, where JJ Welch was performing renovations, regarding compliance with the RRP Rule. The enclosed Complaint is based on the results of EPA's inspection and additional information obtained by EPA. EPA seeks civil penalties pursuant to TSCA Section 16, 15 U.S.C. § 2615, which provides that violations of TSCA Section 409, 15 U.S.C. § 2689, are subject to the assessment by EPA of civil and/or criminal penalties.

Please read the Complaint and the enclosed rules of hearing practice carefully, as they describe JJ Welch's options in responding to this enforcement action. Among other things, JJ Welch may file an Answer to the Complaint and request a hearing. Whether or not JJ Welch requests a hearing, it may request an informal conference to discuss the

matter with EPA by contacting Andrea Simpson, EPA's attorney in this matter, at (617) 918-1738. Ms. Simpson has been designated to accept service in this matter.

You should know that many Respondents perform Supplemental Environmental Projects ("SEPs") as part of their settlements with EPA. SEPs are environmentally beneficial projects that a Respondent agrees to undertake in settlement of an environmental enforcement action and that the Respondent is not otherwise legally required to perform. In return, EPA considers some percentage of the cost of the SEP as a factor in establishing the final penalty that the Respondent will pay. EPA has issued a SEP Policy to help Respondents and EPA staff determine (a) whether a proposed SEP is acceptable, and (b) how much of the penalty should be mitigated if the Respondent performs the proposed SEP. A copy of that policy is enclosed.

Finally, please note that it is the practice of this office to inform the press of the issuance of administrative complaints. Accordingly, an EPA press release describing this enforcement action may be issued simultaneously with or subsequent to issuing the Complaint.

Sincerely yours,



Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA Region I

Enclosures

cc: John Bucci, Maine DEP
Andrea Simpson, EPA
Jaime DeSousa, EPA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

July 3, 2013

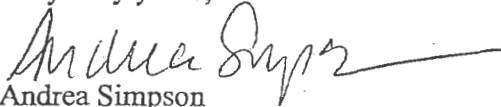
Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (ORA 18-1)
5 Post Office Square
Boston, Massachusetts 02140

Re: James J. Welch & Co., Inc.
Docket No. TSCA-01-2013-0036

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter, please find the original and one copy of the Complaint. Thank you for your assistance in this matter.

Very truly yours,


Andrea Simpson
Senior Enforcement Counsel

cc: Constance Welch

Enclosure

Docket No. TSCA-01-2013-0036

CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2013, the original and one copy of the Complaint in the Matter of James J. Welch & Co., Inc., Docket No. TSCA-01-2013-0036, were hand-delivered to the Regional Hearing Clerk and a copy was sent to Respondent, as set forth below:

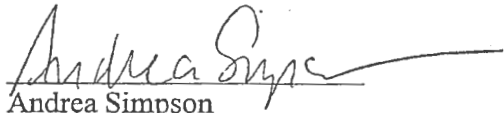
Original and one copy
by hand delivery to:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I (ORA18-1)
5 Post Office Square, Suite 100
Boston, MA 02109

Copies by certified mail to:

Constance Welch, President
James J. Welch & Co., Inc.
27 Congress Street, Suite 513
Salem, Massachusetts 01970

Dated: 7/3/13


Andrea Simpson
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region I
5 Post Office Square, Suite 100
Boston, MA 02109

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:)
)
James J. Welch & Co., Inc.)
27 Congress Street, Suite 513)
Salem, Massachusetts 01970-5523)
)
Respondent.)
)
Proceeding under Section 16(a) of the)
Toxic Substances Control Act,)
15 U.S.C. § 2615(a))
)

**Docket No.
TSCA-01-2013-0036**

**COMPLAINT AND
NOTICE OF
OPPORTUNITY FOR
HEARING**

COMPLAINT

I. STATUTORY AND REGULATORY BACKGROUND

1. This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. § 22.1(a)(5). Complainant is the Legal Enforcement Manager of the Office of Environmental Stewardship, U.S. Environmental Protection Agency (“EPA”), Region 1. Respondent, James J. Welch & Co., Inc. (“JJ Welch” or “Respondent”), is hereby notified of Complainant’s determination that Respondent has violated Sections 15 and 409 of TSCA, 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. § 4851 *et seq.*, and the federal regulations promulgated thereunder, entitled “Residential Property Renovation,” as set forth at 40 C.F.R. Part 745, Subpart E.

Complainant seeks civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides that violations of Section 409 of TSCA are subject to the assessment by Complainant of civil and/or criminal penalties.

2. In 1992, Congress passed the Act in response to findings that low-level lead poisoning is widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. 42 U.S.C. § 4851(1)-(4). 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. *Id.* § 4851a(2). 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. Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. No. 102-550, § 1021, 106 Stat. 3672, 3912 (1992).

3. 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).

4. 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” and “child-occupied facilities.” “Renovation” is defined as “the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces” “Renovation includes (but is not limited to): . . . removal of building components (e.g., . . . windows).” 40 C.F.R. § 745.83. “Target housing” is defined as any housing constructed prior to 1978, except housing for the elderly or disabled (unless any child who is less than six years old resides or is expected to reside in such housing), or any 0-bedroom dwelling. “Child-occupied facility” is defined as “a building or portion of a building, constructed prior to 1978, visited regularly by the same child, under [six] years of age, on at least two different days with in any week . . . provided that each day’s visit lasts at least 3 hours and the combined weekly visit lasts at least six hours, and the combined annual visits last at least 60 hours.” Id. “Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms.” Id. They may be located in target housing or in public or commercial buildings. Id.

5. 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.

6. Pursuant to 40 C.F.R. § 745.85 and 40 C.F.R. § 745.89(d)(1), “renovations” must be performed by certified “firms” using certified “renovators.” Certified “firms” must ensure that all renovations performed by the firm are performed in accordance with

the work practice standards in 40 C.F.R. § 745.85. 40 C.F.R. § 745.89(d)(3). A “firm” includes a corporation. Id. § 745.83.

7. A “renovator” is defined as “an individual who either performs or directs workers to perform renovations.” Id. Pursuant to 40 C.F.R. § 745.90(b)(1), renovators must perform or direct workers who perform all work practice standards in 40 C.F.R. § 745.85.

8. Pursuant to Section 409 of TSCA, it is unlawful for any person to fail to comply with any rule issued under Subchapter IV of TSCA (such as the RRP Rule). 15 U.S.C. § 2689. Pursuant to 40 C.F.R. § 745.87(a), the failure to comply with a requirement of the RRP Rule is a violation of Section 409 of TSCA. Pursuant to 40 C.F.R. § 745.87(b), the failure to establish and maintain the records required by the RRP Rule is a violation of Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

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

10. Section 16(a) of TSCA and 40 C.F.R. § 745.87(d) authorize the assessment of a civil penalty of up to \$25,000 per day per violation of the RRP Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 through January 12, 2009, are subject to penalties up to \$32,000 per day per violation. Violations that occur on or after January 13, 2009, are subject to penalties up to \$37,500 per day per violation. See Civil Monetary Penalty Inflation Adjustment Rule, 73 Fed. Reg. 75340, 75345 (Issued Dec. 11, 2008) (codified at 40 C.F.R. § 19.4).

II. GENERAL ALLEGATIONS

11. Respondent is a corporation registered in Massachusetts with its principal place of business located at 27 Congress Street, Suite 513, Salem, Massachusetts. Respondent provides general contracting services, including residential and commercial construction and renovation. Therefore, Respondent was a “firm” as defined in 40 C.F.R. § 745.83.

12. On August 11, 2011, the Town of Kittery, Maine entered into a contract with JJ Welch to serve as general contractor to renovate the former Frisbee School as part of the Frisbee School Revitalization Project. The project involved converting the former Frisbee School into a community center.

13. On or about August 18, 2011, JJ Welch entered into a contract with New Hampshire Plate Glass Corporation (“NH Glass”) to conduct window replacement as part of the Frisbee School Revitalization Project.

14. At all times relevant to this Complaint, the Frisbee School Revitalization project was a “renovation,” as defined in 40 C.F.R. § 745.83.

15. At all times relevant to this Complaint, the Frisbee School Revitalization Project was a “renovation for compensation” subject to the RRP Rule. See 40 C.F.R. § 745.82. Furthermore, the window replacement project at the former Frisbee School did not satisfy the requirements for an exemption to the provisions of TSCA or the RRP Rule.

16. At the time of the renovation, there were two connected buildings that comprised the school—the original building, where the renovation occurred, and the

annex (collectively referred to as the "Facility"). The original building was built in 1941 and the annex was built in 1951.

17. At the time of the renovation, a Head Start Program and the Kittery Recreation Department Childcare Programs were located in the annex building. Upon completion of the renovation project, the Kittery Recreation Department Childcare Programs were moved into the newly renovated portion of the Facility.

18. At all times relevant to this Complaint, the Facility was a "child-occupied facility," as defined in 40 C.F.R. § 745.83. Furthermore, the Facility did not satisfy the requirements for an exemption to the provisions of TSCA or the RRP Rule.

19. Respondent successfully completed an accredited course regarding the RRP Rule on September 1, 2010, and at all times relevant to this Complaint, Respondent was a certified "firm" pursuant to 40 C.F.R. § 745.89.

20. Between September 2011 and February 2012, NH Glass removed approximately 70 storm windows with wood trim at the Facility.

21. At all times relevant to this Complaint, NH Glass was a "renovator," as defined in 40 C.F.R. § 745.83.

22. In a report dated April 18, 2011, Ransom Environmental Consultants, Inc. documented that painted surfaces in the former Frisbee School building, including windows, contained lead-based paint above 1.0 milligrams per square centimeter and that the renovation contractors should be trained in accordance with the RRP rule.

23. On February 14, 2012, an inspector from the Maine Department of Environmental Protection ("ME DEP") visited the Facility after receiving a complaint indicating that lead paint may be present at the Facility posing a risk to children attending

day care programs there. The inspector conducted a lead test and determined that lead-based paint existed at the Facility.

24. On February 23, 2012, inspectors from EPA Region 1 and the ME DEP conducted an inspection of the Facility to evaluate Respondent's compliance with the RRP Rule. During the inspection, the EPA and ME DEP inspectors interviewed the JJ Welch Project Manager, David Crook, and Nick Raitt, the foreman for NH Glass. Mr. Crook stated that he had received a copy of the report prepared by Ransom Environmental Consultants, Inc. and had sent a copy to NH Glass. However, Mr. Raitt stated he had been told by an employee of JJ Welch that no lead was present in the building. Mr. Raitt also stated that he did not follow any of the RRP Rule requirements during the window replacement project.

25. Mr. Crook stated that around the beginning of February 2012, he observed NH Glass removing window trim without containment and immediately halted the window renovations. NH Glass had replaced approximately 70 windows prior to the work stoppage. Mr. Raitt confirmed that this information was true.

26. During the window replacement project, Nick Raitt and Roy Palmer acted as foremen for NH Glass. Neither Mr. Raitt nor Mr. Palmer were certified renovators, as required by 40 C.F.R. § 745.90, at the time of the window replacement project.

27. After NH Glass stopped work on the project, JJ Welch completed the project and conducted clean up of paint chips in the soil.

28. 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 at 40 C.F.R. Part 745, Subpart E.

III. VIOLATION

Count 1 - Failure to Ensure a Certified Renovator is assigned to each Renovation and Discharges All Renovator Responsibilities

29. Complainant incorporates by reference paragraphs 1 through 28.

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

31. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), for exterior renovations, “renovators 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.”

32. 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.”

33. JJ Welch did not ensure that during window renovations at the Facility, the ground was covered with plastic sheeting or other impermeable material to collect falling paint debris.

34. JJ Welch did not ensure that during window renovations at the Facility, 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.

35. Respondent’s failure to ensure that (a) the ground was covered 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, for the renovation project at the Facility and (b) waste from the renovation project was contained at the Facility 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). JJ Welch, therefore, violated section 409 of TSCA.

IV. PROPOSED PENALTY

36. In determining the amount of any penalty to be assessed, 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 such other matters as justice may require.

15 U.S.C. § 2615(a)(2)(B).

37. 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-eight thousand one hundred twenty-five dollars (\$28,125) for the TSCA

violation alleged in this Complaint. (See Attachment I to this Complaint explaining the reasoning for this penalty.) The provisions violated and the corresponding penalties are as follows:

PROVISION	REQUIREMENT	PENALTY
Failure to Ensure Renovations Are Performed in Accordance with § 745.85	40 C.F.R. § 745.89(d)(3)	\$22,500
Culpability 25%		\$5,625
Total Penalty		\$28,125

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

38. As provided by Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and in accordance with 40 C.F.R. § 22.14, Respondent has a right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. Any request for a hearing must be included in Respondent's written Answer to this Complaint ("Answer") and filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.

39. The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint. 40 C.F.R. § 22.15(b). Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. Id. The failure of Respondent to deny an allegation contained in the Complaint constitutes an admission of that allegation. Id. § 22.15(d). The Answer must also state the circumstances or arguments alleged to constitute the grounds of any

defense; the facts that Respondent disputes; the basis for opposing any proposed penalty; and whether a hearing is requested. See 40 C.F.R. § 22.15 of the Consolidated Rules of Practice for the required contents of an Answer.

40. Respondent shall send the original and one copy of the Answer, as well as a copy of all other documents that Respondent files in this action, to the Regional Hearing Clerk at the following address:

Wanda A. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: ORA18-1
Boston, Massachusetts 02109-3912

41. Respondent shall also serve a copy of the Answer, as well as a copy of all other documents that Respondent files in this action, to Andrea Simpson, the attorney assigned to represent Complainant in this matter, and the person who is designated to receive service in this matter under 40 C.F.R. § 22.5(c)(4), at the following address:

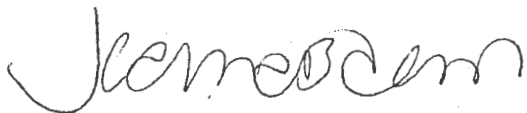
Andrea Simpson
Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: OES04-2
Boston, Massachusetts 02109-3912

42. If Respondent fails to file a timely Answer to the Complaint, Respondent may be found to be in default, pursuant to 40 C.F.R. § 22.17 of the Consolidated Rules of Practice. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations under Section 16(a)(2)(A) of TSCA. Id. § 22.17(a). Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in the default order shall become due and payable

by Respondent, without further proceedings, thirty (30) days after the default order becomes final.

VI. SETTLEMENT CONFERENCE

43. Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with Complainant or his designee concerning the violations alleged in this Complaint. Such conference provides Respondent with an opportunity to respond informally to the allegations, and to provide whatever additional information may be relevant to the disposition of this matter. To explore the possibility of settlement, Respondent or Respondent's counsel should contact Andrea Simpson, Senior Enforcement Counsel, at the address cited above or by calling (617) 918-1738. Please note that a request for an informal settlement conference by Respondent does not automatically extend the 30-day time period within which a written Answer must be submitted in order to avoid becoming subject to default.



Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region 1

7 / 3 / 13
Date

ATTACHMENT 1 TO COMPLAINT

In the Matter of James J. Welch & Company, Inc.
Docket Number TSCA-01-2013-0036

PROPOSED PENALTY SUMMARY

Pursuant to EPA's August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* ("LBP Consolidated ERPP"), EPA proposes a civil penalty in the amount of \$28,125 to be assessed against James J. Welch & Company, Inc. as follows¹:

COUNT 1. Failure to Assign Certified Renovators

Provision Violated: 40 C.F.R. § 745.89(d)(3) requires that all firms performing applicable renovations must ensure that such work is performed in accordance with the work practice standards in § 745.85.

Circumstance Level: The failure to ensure that a renovation is performed in accordance with the work practice standards results in a high probability of a renovation firm failing to comply with the work practice standards of 40 C.F.R. § 745.85. As a result, under the LBP Consolidated ERPP Appendix A, a violation of 40 C.F.R. § 745.89(d)(3) is a *Level 3a* violation.

Extent of Harm: The LBP Consolidated ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The absence of children or pregnant women warrants a *minor* extent factor.

Respondent failed to ensure that such work was performed in accordance with the work practice standards in § 745.85.

A 25% upward adjustment was added to the penalty for culpability because, as a certified firm, JJ Welch should have known of its obligations under the RRP Rule.

¹ Section 16(a) of TSCA and 40 C.F.R. § 745.87(d) authorize the assessment of a civil penalty of up to \$25,000 per day per violation of the RRP Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occurred after March 15, 2004 through January 12, 2009, are subject to penalties up to \$32,000 per day per violation. Violations that occur on or after January 13, 2009, are subject to penalties up to \$37,500 per day per violation. See 73 Fed. Reg. 75340 (December 11, 2008).