

U. S. ENVIRONMENTAL PROTECTION AGENCY

REGION 7

11201 RENNER BOULEVARD

LENEXA, KANSAS

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

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BEFORE THE ADMINISTRATOR

In the matter of

SUPERIOR RESTORATION
& CONSTRUCTION LLC,

Respondent.

Docket. No. TSCA-07-2016-0017

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF COMPLAINANT'S MOTION FOR DEFAULT ORDER

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In support of its Motion for Default Order, Complainant, the Chief of the Toxics and Pesticides Branch, EPA Region 7, states as follows:

I. INTRODUCTION

A. Procedural History

The Complaint in this matter was filed on August 16, 2016. The Complaint alleges that Respondent violated Section 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation* (“Renovation, Repair, and Painting Rule”), which the EPA promulgated pursuant to Sections 402(a), 402(c), 406(b), and 407 of TSCA, 15 U.S.C. §§ 2682(a), 2682(c), 2686(b), and 2687. Specifically, the Complaint alleges that Respondent failed to obtain initial firm certification, failed to assign a certified renovator, failed to provide the property owner with the EPA-approved lead hazard information pamphlet, and failed to comply with numerous lead-safe work practice standards during Respondent’s renovation of a property located at 3415 Charlotte Street in Kansas City, Missouri.

B. Background of the Renovation, Repair, and Painting Rule

In October 1992, Congress passed the Lead-Based Paint Exposure Reduction Act (the “Act”) as Title X, Subtitle B, of the Housing and Community Development Act of 1992, Pub. L. 102-550. The Act amended TSCA, 15 U.S.C. 2601 *et seq.*, by adding *Title IV—Lead Exposure Reduction*, including Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. In order to reduce the risk of exposure to lead in connection with renovation and remodeling of housing constructed before 1978, Section 402(c) of TSCA, 15 U.S.C. § 2682(c), directed the Administrator to promulgate guidelines for the conduct of such renovation and remodeling activities that create a risk of exposure to dangerous levels of lead. In addition, Section 406(b) of

TSCA, 15 U.S.C. § 2686(b), directed the promulgation of regulations that require each person who performs for compensation renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencement of the renovation. In March 2008, the EPA issued the Renovation, Repair, and Painting Rule, amending and recodifying regulations at 40 C.F.R. Part 745, Subparts E and L, and adding additional regulations at 40 C.F.R. Subpart L. *See Lead; Renovation, Repair, and Painting Program*, 73 Fed. Reg. 21692, 21758 (Mar. 31, 2008).

II. LEGAL STANDARD

A. Service of the Complaint

“In order for a default judgment to enter, service of process on the respondent . . . must be valid.” Las Delicias Cmty., 14 E.A.D. 382, 387, 2009 EPA App. LEXIS 22, *14 (Aug. 17, 2009) (citing Medzam, Ltd., 4 E.A.D. 87, 93 (EAB 1992)). “Agencies are free to craft their own rules, reflecting requirements of due process, that determine whether service is proper, and they are not required to follow the Federal Rules of Civil Procedure.” Las Delicias Cmty., 14 E.A.D. at 387-88, 2009 EPA App. LEXIS 22 at *14-15 (citing Katzson Bros., Inc. v. U.S. Env'tl. Prot. Agency, 839 F.2d 1396, 1399 (10th Cir. 1988)). Recognizing that the EPA “availed itself of this opportunity by establishing its Consolidated Rules of Practice,” the United States Court of Appeals for the Tenth Circuit held in Katzson Bros., Inc. v. U.S. Environmental Protection Agency that “[t]hese rules and the requirements of due process alone determine whether EPA’s service is proper.” 839 F.2d at 1399; Katzson Bros., Inc., 2 E.A.D. 134, 135 n. 2 (EAB 1986) (“[S]ervice of process rules must comport with notions of fundamental fairness.”).

Rule 22.5(b)(1)(i) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits

("Consolidated Rules of Practice"), 40 C.F.R. § 22.5(b)(1)(i), states, in relevant part, that "Complainant shall serve on respondent, or a representative authorized to receive service on respondent's behalf, a copy of the signed original of the complaint, together with a copy of [the Consolidated Rules of Practice] . . . by certified mail with return receipt requested . . ." When the respondent is "a domestic or foreign corporation, a partnership, or an unincorporated association which is subject to suit under a common name," Rule 22.5(b)(1)(ii)(A) of the Consolidated Rules of Practice, 40 C.F.R. § 22.5(b)(1)(ii)(A), provides that "complainant shall serve an officer, partner, a managing or general agent, or any other person authorized by appointment or by Federal or State law to receive service of process." "Service of the complaint is complete when the return receipt is signed." 40 C.F.R. § 22.7(c). "Proof of service of the complaint shall be made by . . . properly executed receipt . . . filed with the Regional Hearing Clerk immediately upon completion of service." 40 C.F.R. § 22.5(b)(1)(iii).

As discussed below, the Environmental Appeals Board has previously approved of service by properly addressed certified mail that is received by the secretary or receptionist of a corporation at a known place of business other than the corporation's address of record. Jonway Motorcycle (USA) Co., Ltd., 2014 EPA App. LEXIS 45, *14 (Nov. 14, 2014); Katzson Bros., Inc., 2 E.A.D. 134, 136 n. 2 (EAB 1986). Notably, the Board has not yet reached the same conclusion with respect to service of a complaint on limited liability companies or other types of unincorporated associations.¹ In Jonway Motorcycle (USA) Co., Ltd., the Board noted that its

¹ The Consolidated Rules of Practice do not define "unincorporated association," nor does it appear that the Board has previously discussed the status of limited liability companies under Rule 22.5(b)(1)(ii)(A) of the Consolidated Rules of Practice, 40 C.F.R. § 22.5(b)(1)(ii)(A). The definition of "limited liability company" in the Kansas Revised Limited Liability Act is also uninformative. See K.S.A. 17-7663 (2017) (defining limited liability company as "a limited liability company formed under the laws of the state of Kansas and having one or more members."). Nevertheless, LLCs are generally considered unincorporated associations under other state LLC statutes and in Supreme Court jurisprudence. See, e.g., 18 Okl. St. § 2001 (2017) (defining limited liability company as "an entity that is an unincorporated association or proprietorship having one or more members"); Ferrell

ruling is “limited to the context of service on a corporation [because] [c]ases involving other types of organizations or individuals may present other considerations or circumstances that the Board will consider in determining the validity of service under the applicable Part 22 rules.” 2014 EPA App. LEXIS 45, *16 (Nov. 14, 2014). Lacking explicit treatment in the Consolidated Rules of Practice, the validity of service to the registered agent of a limited liability company—particularly when such service is received by a secretary of the LLC at a known place of business other than the LLC’s address of record—must be weighed on the basis of “fundamental requirements of fairness and justice.” See Katzson Bros., Inc. v. U.S. Env’tl. Prot. Agency, 839 F.2d 1396, 1399 (10th Cir. 1988). The Board’s previous decisions in the context of corporations provide valuable guidance.

In conducting this analysis, it should be noted at the outset that “[t]he general attitude of the federal courts is that [rules relating to service of process] should be liberally construed in the interest of doing substantial justice.” 4A C. WRIGHT, et al., *Federal Practice & Civil Procedure* § 1083 at 333 (3rd ed.). The Tenth Circuit has adopted this so-called rule of “liberal construction,” citing seminal California case law establishing the doctrine in that jurisdiction. Fox v. Cal. Franchise Tax Bd., 443 Fed. Appx. 354, 364 (10th Cir. 2011) (citing Pasadena Medi-Center Associates v. Superior Court of Los Angeles Cnty., 9 Cal. 3d 773 (Cal. 1973)). In Pasadena Medi-Center Associates, the California Supreme Court construed the state’s newly revised service of process laws, upholding the validity of service made to a person that was erroneously identified as the corporation’s secretary and treasurer. 9 Cal. 3d at 783. In reaching

v. Express Check Advance of SC LLC, 591 F.3d 698 (4th Cir. 2010) (surveying diversity jurisdiction case law and concluding that “the Supreme Court has often characterized any business entity that is not a corporation as an ‘unincorporated association’”); Siloam Springs Hotel, L.L.C. v. Century Sur. Co., 781 F.3d 1233, 1234 (10th Cir. 2015) (“Like every other circuit to consider this question, this court concludes an LLC, as an unincorporated association, takes the citizenship of all its members.”).

its decision, the court reasoned that “[t]he provisions of the [service of process rules] should be liberally construed to effectuate service and uphold the jurisdiction of the court if actual notice has been received by the defendant[.]” *Id.* at 778. In the analysis of actual notice, “the question of service should be resolved by considering each situation from a practical standpoint.” *Id.* (internal quotation marks omitted). The court noted that this “liberal and practical approach to service of process . . . [tends] to eliminate unnecessary, time-consuming, and costly disputes over service of process issues.” Summers v. McClanahan, 44 Cal. Rptr. 3d 338, 410, 415 (Cal. App. 2d Dist. 2006).

In practice, the Board’s analysis of service of process issues under the Consolidated Rules of Practice has hewed to the “liberal construction” rule developed under the Federal Rules of Civil Procedure.² With respect to service on corporations by certified mail, the Board has reached several legal conclusions that demonstrate the flexibility inherent in its reasoning, each of which is approached “from a practical standpoint” and anchored in “notions of fundamental fairness.” Pasadena Medi-Center, 9 Cal. 3d at 778; Katzson Bros., Inc., 2 E.A.D. 134, 135 n. 2 (EAB 1986).

First, the Board has recognized that “proper service on a corporation by certified mail does not require that the named addressee be the person who signs the return receipt.” Peace Industry Group (USA) Inc., 17 E.A.D. No. 16-01, 2016 EPA App. LEXIS 56, *36 (Dec. 22, 2016); *see also* Jonway Motorcycle (USA) Co., Ltd., 2014 EPA App. LEXIS 45, *14 (Nov. 14, 2014) (holding that the designated agent’s “signature on the return receipt . . . [is] not a necessary prerequisite to a finding of valid service on a corporation.”); Katzson Bros., Inc. v. U.S. Env’tl.

² Wego Chem. & Mineral Corp., 4 E.A.D. 513, 519 n. 10 (EAB 1993) (“The [Federal Rules of Civil Procedure] are not binding on administrative agencies but many times these rules provide useful and instructive guidance in applying the Rules of Practice.”).

Prot. Agency, 839 F.2d 1396, 1399 (10th Cir. 1988) (upholding the Board's determination that service on a corporation by certified mail, return receipt requested, "need only be addressed, rather than actually delivered, to an officer, partner, agent, or other authorized individual"). Rather, service on a corporation is complete "if EPA properly addresses and mails the complaint by certified mail, and an individual at that address signs and returns the receipt" Peace Industry Group (USA) Inc., 17 E.A.D. No. 16-01, 2016 EPA App. LEXIS 56, *36; *see also* Medzam, Ltd., 4 E.A.D. 87, 93 (EAB 1992) ("We think the proper focus of our inquiry in determining the effectiveness of service . . . [is] whether the Complaint was properly addressed and mailed . . . rather than on the authority of the employee who signed the receipt on behalf of the Respondent."). Behind this conclusion is a practical recognition that "Complainant has control over how the mail is addressed but none whatsoever over who receives and signs for it on behalf of the Respondent." Medzam, Ltd., 4 E.A.D. 87, 93 (EAB 1992). "A corporation, and its registered agent . . . have a duty to ensure that properly addressed certified mail is correctly processed." Katzson Bros., Inc., 2 E.A.D. 134, 136 n. 2 (EAB 1986). To enable corporations' successful execution of this duty, Rule 22.5(b)(1)(ii)(A) of the Consolidated Rules of Practice, 40 C.F.R. § 22.5(b)(1)(ii)(A), requires that service of process be addressed to a certain, specified representative. "This provision ensures that the representative who actually receives the mail will know to whom it should be delivered." Katzson Bros., Inc., 839 F.2d at 1399; *see also* Peace Industry Group (USA) Inc., 17 E.A.D. No. 16-01, 2016 EPA App. LEXIS 56, *43 ("By necessity, corporations conduct business on a day-to-day basis through the use of assistants and subordinates who are commonly responsible for tasks such as accepting mail, signing return receipts and ensuring that mail is properly delivered to the addressee."). To hold otherwise "would severely hinder service of process on corporations by certified mail, since the postal

service employee would have to wait . . . until the officer, partner, or agent could sign the return receipt.” Katzson Bros., Inc., 839 F.2d at 1399.

Second, the Board has further concluded that service of a complaint is effective even in the absence of actual notice to the named addressee. In Katzson Bros., Inc., the Board held that “[n]otions of fundamental fairness do not impose a duty on EPA to look behind the corporation’s doors to ensure that its chosen methods for mail distribution guarantee receipt by the individual addressee.” Katzson Bros., Inc., 2 E.A.D. 134, 136 n. 2 (EAB 1986); Katzson Bros., Inc. v. U.S. Env’tl. Prot. Agency, 839 F.2d 1396, 1400 (10th Cir. 1988) (“Due process does not require actual notice.”). As long as service is “in fact properly addressed to [the respondent’s] registered agent . . . and received, from the corporation’s point of view, by [an] employee with specific duty of accepting certified mail addressed to that agent,” then the “EPA’s rules for service of the complaint [are] fully complied with.” Katzson Bros., Inc., 2 E.A.D. at 136; *see also* Medzam, Ltd., 4 E.A.D. 87, 93 (EAB 1992) (noting that “[t]he rule does not contain acknowledgement-of-service requirements”). Behind this holding is the Board’s recognition that the EPA has control only over how certified mail is addressed—to whom and at what location—and, therefore, no practical ability nor procedural duty to ensure actual receipt by the intended addressee. Insisting on proof of actual notice

would create a standardless free-for-all in which defendants would bring motions to quash service claiming they never received actual notice and, in many cases, plaintiffs would be unable to prove otherwise. In addition, such a rule would put a premium on defendants developing creative ways of evading service thereby thwarting the fundamental principle [that] disputes should be resolved in courts, on the merits.

Summers v. McClanahan, 44 Cal. Rptr. 3d 338, 410, 415 (Cal. App. 2d Dist. 2006).

Third, and finally, where service is unsuccessful at a corporation’s address of record, the Board has permitted service by certified mail at a known place of business. Jonway Motorcycle

(USA) Co., Ltd., 2014 EPA App. LEXIS 45, *14 (Nov. 14, 2014). While the Board “generally expects EPA to serve complaints on respondents or their authorized agent at the official address of record . . . there is nothing in the rules that prevents EPA from serving [a corporation’s] designated agent at an address where he can be found.” *Id.* at 14 n. 13. “To conclude otherwise would allow parties to avoid service by refusing to accept service at their official service addresses or by listing sham service addresses.” *Id.*

Each of these conclusions hinges on practical application of the EPA’s service of process provisions with an eye toward fundamental fairness. The Board’s past reasoning with respect to service on corporations reflects practical and equitable considerations that are equally applicable in the context of service on LLCs via certified mail. While the Board may find other factors relevant, as noted in Peace Industry Group (USA) Inc., these decisions present a basic set of considerations on which to assess whether service by certified mail addressed to the registered agent of an LLC at a known business location other than the company’s address of record comports with “fundamental requirements of fairness and justice.”

B. Default Order

The Consolidated Rules of Practice provide that a party may be found to be in default, after motion, upon failure to file a timely answer to the complaint. 40 C.F.R. § 22.17(a). “A motion for default may seek resolution of all or part of the proceeding,” and “[w]here the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested.” 40 C.F.R. § 22.17(b). “Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent’s right to contest such factual allegations.” 40 C.F.R. § 22.17(a). Therefore, when

the Presiding Officer finds that default has occurred, he or she “shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued.” 40 C.F.R. § 22.17(c). Additionally, the Presiding Officer must order the relief proposed in the complaint or the motion for default “unless the requested relief is clearly inconsistent with the record of the proceeding or the Act.” *Id.* Where such default order resolves all outstanding issues and claims in the proceeding, it constitutes an initial decision under the Consolidated Rules of Practice. *Id.*

III. ARGUMENT

A. Complainant Properly Served the Complaint on Respondent

Respondent is a limited liability company registered and operating under the laws of the state of Kansas. Compl. ¶ 3. Pursuant to K.S.A. 17-7673, Respondent filed articles of organization with the Kansas Secretary of State on December 5, 2013, providing the address of Respondent’s registered office and the name and address of the registered agent for service of process, as required by K.S.A. 17-7666. Exh. A, *Limited Liability Company Articles of Organization* (Dec. 5, 2013). The articles of organization name Cory W. Poulsen as the resident agent of Superior Restoration & Construction LLC, and the address provided for Respondent’s registered office is 23625 West 92nd Terrace, Lenexa, Kansas 66227. *Id.* The same individual and mailing address for Respondent’s registered agent were recertified in annual reports filed by Mr. Poulsen with the Kansas Secretary of State in 2015, 2016, and 2017 pursuant to K.S.A. 17-76,139. Exh. B, *Limited Liability Company Annual Reports, 2015-2017* (retrieved Mar. 28, 2018). Additionally, these annual reports list Cory Poulsen as the sole member and

owner of the LLC, with a mailing address of 23625 West 92nd Terrace, Lenexa, Kansas 66227.³

This address was also provided to the EPA's inspector during inspection of Respondent's work site on September 17, 2015.

On February 16, 2016, the EPA transmitted a pre-filing negotiations letter via certified mail, return receipt requested, to Mr. Poulsen at Respondent's registered office in Lenexa, Kansas, concerning alleged TSCA violations. Exh. C, *Pre-Filing Negotiations Letter* (Feb. 16, 2016). This letter was returned unclaimed in March 2016, and a second attempt was made to transmit the pre-filing negotiations letter to a listed business address via certified mail on March 18, 2016. *Id.*; Exh. D, *Pre-Filing Negotiations Letter* (Mar. 18, 2016). Delivery of this letter was also unsuccessful. *See* Exh. D. In order to verify a current mailing address for Superior Restoration & Construction LLC, representatives of the EPA called Mr. Poulsen on March 23, 2016. Mr. Poulsen answered the phone and confirmed that the address on West 92nd Terrace is his home as well as the address of record for the company. With this information, the EPA transmitted another pre-filing negotiations letter via certified mail to Respondent's address of record on March 24, 2016. This letter was returned to the Agency unclaimed in April 2016. Exh. E, *Pre-Filing Negotiations Letter* (Mar. 24, 2016).

After the third failed attempt to deliver a pre-filing negotiations letter via certified mail, an inspector affiliated with Region 7's Toxics & Pesticides Branch attempted to deliver a copy of the pre-filing negotiations letter via personal service to Mr. Poulsen at the registered Lenexa address on June 10, 2016. Although this attempt was also unsuccessful, the EPA's inspector noted that the Lenexa address "appears to be Mr. Poulsen's residence [and] is occupied," and

³ Pursuant to K.S.A. 17-76,139(a)(2), the annual report must contain "a list of the members owning at least 5% of the capital of the limited liability company, with the post office address of each."

that “there was a ‘crew’ cab pickup truck parked in the driveway.” Exh. F, *Memorandum from John Leftwich to Candace Bednar* (June 13, 2016). The EPA’s inspector then made a second attempt to render personal service on Mr. Poulsen at Respondent’s last known business address, 9202 Nieman Road in Overland Park, Kansas, the same address to which the Agency’s second pre-filing letter was sent. *See* Exh. D. Personal service at this location was likewise unsuccessful. Exh. F. Finally, an internet search revealed a second location in Overland Park that was associated with Respondent’s business. The EPA’s inspector personally visited this address, 7861 Mastin Street, on June 13, 2016, where he encountered a woman who identified herself as Heather Stuart, the office manager for Superior Restoration & Construction LLC. Ms. Stuart explained to the EPA’s inspector that the company was in the process of moving to the new location on Mastin Drive and had not yet had time to erect signage. Exh. G, *Memorandum from John Leftwich to Candace Bednar* (June 14, 2016). The inspector left the EPA’s pre-filing letter with Ms. Stuart, who provided assurance that Mr. Poulsen would receive the letter. *Id.*; Exh. H, *Affidavit of Delivery of Pre-Filing Negotiations Letter* (June 15, 2017).

Thereafter, Respondent failed to contact the EPA during the pre-filing negotiations period,⁴ and the Complaint in this matter was filed by Complainant and transmitted to Respondent on August 16, 2016. Exh. I, *Transmittal of Complaint and Notice of Opportunity for Hearing* (Aug. 16, 2016). Having previously failed to deliver the pre-filing letter by certified mail and personal service at Respondent’s address of record, Complainant sent the Complaint via certified mail to 7861 Mastin Drive in Overland Park, Kansas, the address at which the EPA’s inspector had successfully made contact with Respondent’s office manager during business

⁴ Prior to filing a formal administrative complaint, Region 7 ordinarily allows 10 days for a respondent to contact the Agency after it has received an invitation to engage in settlement negotiations.

hours. *Id.*; see Exh. H. The complaint was addressed to Mr. Cory Poulsen—Respondent's registered agent and sole owner—and received by Respondent on August 19, 2016. Exh. J, *Transmittal of Proof of Service of Complaint and Notice of Opportunity for Hearing* (Aug. 29, 2016). As proof of service, Complainant filed a copy of the return receipt with the Regional Hearing Clerk on August 29, 2016. *Id.* A copy of Complainant's proof of service filing was transmitted to Respondent on the same date and received on September 1, 2016. *Id.*

After 30 days elapsed from Respondent's receipt of the Complaint, the undersigned sent Respondent a Notice of Intent to Institute Default Proceedings by certified letter dated September 22, 2016. Exh. K, *Notice of Intent to Institute Default Proceedings* (Sept. 22, 2016). This Notice warned Respondent of Complainant's intention to move for a default order if Respondent did not file a written answer to the Complaint within 20 days of Respondent's receipt of the Notice. *Id.* Respondent received this default notice letter on September 26, 2016, at its place of business on Mastin Drive. *Id.* As of the date of this filing, Respondent has failed to file an answer or submit any other response or correspondence to the Regional Hearing Clerk for EPA Region 7 concerning this matter. Exh. L, *Declaration of Regional Hearing Clerk* (Mar. 28, 2018).

B. Respondent is in Default for Failure to File a Timely Answer to the Complaint

The Complaint, at paragraph 70, explained the consequences of default under the Consolidated Rules of Practice:

If, within thirty (30) days of receipt of a Complaint, Respondent fails to . . . file a written answer to the Complaint, Respondent may be found in default. Default by Respondent constitutes, for the purposes of this proceeding, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalty proposed in the Complaint shall be assessed unless the Presiding Officer finds that the proposed penalty is clearly inconsistent with the record of the proceeding or TSCA.

The Complaint also contained instructions describing how to properly prepare and file an answer. *See* Compl. ¶ 67. Pursuant to 40 C.F.R. § 22.15(a), Respondent was required to file an answer to the Complaint within 30 days of service of the Complaint. Accordingly, Respondent's period for timely filing an answer expired on September 8, 2016.

Upon lapse of this 30-day period, Complainant offered Respondent a second opportunity to file an answer to the Complaint by letter dated September 22, 2016. Although not required by the Consolidated Rules of Practice, Complainant sent a letter inviting Respondent's belated submission of an answer, warning Respondent of the Agency's intent to institute default proceedings should Respondent not file an answer within 20 days of Respondent's receipt of the letter. Exh. K. Respondent again allowed this opportunity for response to expire without submitting an answer or otherwise contacting the undersigned as requested in to the Agency's default notice letter.

The Regional Hearing Clerk for EPA Region 7 has confirmed that Respondent has not filed an answer or any other response to the Complaint. Exh. L. Therefore, pursuant to Rule 22.17(a) of the Consolidated Rules of Practice, 40 C.F.R. § 22.17(a), Respondent may, upon Complainant's present motion, be found in default for failure to file a timely answer to the Complaint. *See* 40 C.F.R. § 22.17(a).

C. The Complaint Establishes a Prima Facie Case of TSCA Violations

Pursuant to Rule 22.17(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.17(c), a default order shall be issued against Respondent unless the record shows good cause why a default order should not be issued. Because default by a respondent constitutes admission by the respondent of all facts alleged in the Complaint and a waiver of the respondent's right to contest such factual allegations, Complainant needs only to show that it pled a prima facie case in the

Complaint to establish Respondent's liability. *See* 40 C.F.R. § 22.17(a); In the Matter of Donald Haydel d/b/a Haydel Brothers/Adams Wrecking Co., CWA Docket No. VI-99-1618, 2000 WL 436240 (Apr. 5, 2000).

1. The Complaint Alleges Facts Necessary to Establish that the Renovation, Repair, and Painting Rule is Applicable to Respondent's Renovation.

To establish liability for the TSCA violations alleged in the Complaint, Complainant must establish basic jurisdictional elements common to all violations of the Renovation, Repair, and Painting Rule. The regulations at 40 C.F.R. §§ 745.80 and 745.82(a) provide that the Renovation, Repair, and Painting Rule is applicable to "all renovations performed for compensation in target housing and child-occupied facilities." Section 401 of TSCA, 15 U.S.C. § 2681, defines "target housing" as "any housing constructed prior to 1978, except housing for the elderly or persons with disabilities . . . or any 0-bedroom dwelling." The term "renovation" is defined by 40 C.F.R. § 745.83 as "the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by [40 C.F.R. § 745.223]."⁵ Further, although "compensation" is not defined in the regulation, the preamble to the final rule published in the Federal Register clarifies that "compensation includes pay for work performed, such as that paid to contractors and subcontractors." *Lead; Renovation, Repair, and Painting Program*, 73 Fed. Reg. 21692, 21707 (Mar. 31, 2008). Finally, to establish a violation of Section 409 of TSCA, 15 U.S.C. § 2689, and Respondent's liability for civil penalties under Section 16 of TSCA, 15 U.S.C.

⁵ "The term renovation includes, but is not limited to, the removal, modification, or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather stripping); and interim controls that disturb painted surfaces." 40 C.F.R. § 745.83.

§ 2615, Respondent must be a “person,” which is defined by 40 C.F.R. § 745.83 as “any natural or judicial person including any individual, corporation, partnership, or association.”

The Complaint contains all jurisdictional allegations necessary to establish the applicability of the Renovation, Repair, and Painting Rule to Respondent. First, the Complaint alleges at paragraphs 15 and 20 that Respondent was engaged in renovation activities at 3415 Charlotte Street in Kansas City, Missouri, a residential property built in 1904 that is, therefore, “target housing” as defined by Section 401 of TSCA, 15 U.S.C. § 2681. Second, paragraph 18 of the Complaint alleges that Respondent’s activities at such target housing—which included the removal of an 8-by-7 foot wall and the replacement of 13 windows—constituted a regulated “renovation,” as defined 40 C.F.R. § 745.83. Third, as alleged in paragraph 19, such renovations were performed for compensation because Respondent was hired and paid to perform the work by a private property owner. Finally, paragraphs 16 and 17 state that Respondent is and was, at all times relevant to the Complaint, a Kansas limited liability company and, as such, a “person” as defined by 40 C.F.R. § 745.83. Accordingly, the Complaint alleges all facts necessary to establish that Respondent’s activities were subject to the requirements of the Renovation, Repair, and Painting Rule, violation of which subjects Respondent to civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

2. The Complaint Alleges Facts Necessary to Support Distinct Violations of the Renovation, Repair, and Painting Rule.

In addition to establishing necessary jurisdictional elements of the Renovation, Repair, and Painting Rule, Complainant must further establish factual elements specific to the violations alleged in Counts 1 through 9 of the Complaint. One element common to all violations alleged in the Complaint is Respondent’s status as a “firm,” defined by 40 C.F.R. § 745.83 as “a

company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity.” Paragraph 17 of the Complaint alleges that Respondent is a “firm” as that term is defined by 40 C.F.R. § 745.83. The remaining elements of proof for each alleged count of violation are established in the Complaint as follows:

a. Count 1: Failure to Obtain Initial Firm Certification

Count 1 of the Complaint alleges that Respondent violated 40 C.F.R. § 745.81(a)(2)(ii) by failing to apply to the EPA for certification pursuant to 40 C.F.R. § 745.89(a)(1) prior to performance of a renovation for compensation on target housing. The regulation at 40 C.F.R. § 745.81(a)(2)(ii) provides that “[o]n or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under [40 C.F.R.] § 745.89 in target housing or child-occupied facilities.” The Complaint specifies at paragraph 15 that regulated renovation activities were documented by the EPA inspector at 3415 Charlotte Street on September 17, 2015. Additionally, paragraph 26 alleges that the inspector also documented that Respondent had not applied for or obtained certification from the EPA prior to performance of the renovation. As such, the Complaint alleges all elements necessary to establish Respondent’s violation of 40 C.F.R. § 745.81(a)(2)(ii).

b. Count 2: Failure to Provide the EPA-Approved Lead Hazard Pamphlet

Count 2 of the Complaint alleges that Respondent violated 40 C.F.R. § 745.84(a)(1) by failing to provide the owner of the property with a lead hazard information pamphlet before beginning the renovation. The regulation at 40 C.F.R. § 745.84(a)(1) requires firms performing renovation activities in any residential dwelling unit of target housing to provide the owner of the unit with the EPA-approved pamphlet, entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*, no more than 60 days before

beginning the renovation. At paragraph 21, the Complaint alleges that the property was owned by individuals other than Respondent and, at paragraph 30, that the EPA inspector documented that Respondent did not provide the owner of the property with the EPA pamphlet before the start of the renovation at 3415 Charlotte Street. Therefore, the Complaint alleges all elements necessary to establish Respondent's violation of 40 C.F.R. § 745.84(a)(1).

c. Count 3: Failure to Ensure that a Certified Renovator Was Assigned to the Renovation

Count 3 of the Complaint alleges that Respondent violated 40 C.F.R. § 745.89(d)(2) by failing to ensure that a certified renovator was assigned to the renovation performed by Respondent at 3415 Charlotte Street. The regulation at 40 C.F.R. § 745.89(d)(2) provides that firms performing renovation activities must ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90. The Complaint states at paragraph 34 that the EPA inspector documented that Respondent did not assign a certified renovator to the renovation performed at 3415 Charlotte Street. The Complaint, therefore, alleges all elements necessary to establish Respondent's violation of 40 C.F.R. § 745.89(d)(2).

d. Counts 4 – 9: Failure to Comply with Lead-Safe Work Practice Standards

Counts 4 through 9 of the Complaint allege various violations of lead-safe work practice standards required by the Renovation, Repair, and Painting Rule. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations performed on or after July 6, 2010, must be performed in accordance with the work practice standards contained in 40 C.F.R. § 745.85. In order of alleged violation, those standards include:

- i. 40 C.F.R. § 745.85(a)(1), requiring firms to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area;
- ii. 40 C.F.R. § 745.85(a)(2)(i)(A), requiring firms to remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed;
- iii. 40 C.F.R. § 745.85(a)(2)(i)(C), requiring firms to close windows and doors in the work area and to cover doors with plastic sheeting or other impermeable material; and where such doors are used as an entrance to the work area, they must be covered in a manner that allows workers to pass through while confining dust and debris to the work area;
- iv. 40 C.F.R. § 745.85(a)(2)(i)(D), requiring firms to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater;
- v. 40 C.F.R. § 745.85(a)(4)(i), requiring firms to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal; and
- vi. 40 C.F.R. § 745.85(a)(4)(ii), requiring firms, at the conclusion of each work day and at the conclusion of the renovation, to ensure that waste that has been collected from renovation activities is stored under containment, in an

enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

In support of these allegations, the Complaint states at paragraph 15 that renovation activities were documented by the EPA inspector at 3415 Charlotte Street on September 17, 2015. Further, the Complaint alleges, in turn, that the EPA inspector documented that:

- i. Respondent did not post caution tape and warning signs around the yard, front porch, or interior living spaces of 3415 Charlotte Street where renovation and waste-collection activities were occurring, in violation of 40 C.F.R. § 745.85(a)(1);
- ii. Respondent did not remove objects from the work area, including drinking glasses, pots and pans, a microwave, window blinds, and other household items; and where Respondent had covered with plastic sheeting certain objects left on kitchen cabinets and countertops, the edges of such plastic sheeting were not sealed to the floor, in violation of 40 C.F.R. § 745.85(a)(2)(i)(A);
- iii. Building supplies and renovation waste were present on and around the front porch of the property, and Respondent did not cover the front porch entry door to the property with plastic sheeting or other impermeable material, in violation of 40 C.F.R. § 745.85(a)(2)(i)(C);
- iv. Respondent did not cover the floors of the kitchen and adjoining dining room where renovation activities were ongoing with taped-down plastic sheeting or other impermeable material, in violation of 40 C.F.R. § 745.85(a)(2)(i)(D);
- v. Respondent collected construction and renovation waste on the front lawn of the property, including a large pile of debris near the front porch and numerous old

windows lined against a tree, and that such waste from renovation activities was not contained, in violation of 40 C.F.R. § 745.85(a)(4)(i); and

- vi. Respondent did not ensure that such waste collected from the renovation activities was stored under containment at the conclusion of each work day, in violation of 40 C.F.R. § 745.85(a)(4)(ii).

As stipulated above, the facts alleged in the Complaint establish all elements necessary to support Respondent's violations of TSCA. First, the Complaint alleges that Respondent's renovation activities were subject to the requirements of the Renovation, Repair, and Painting Rule because Respondent is a person that performed, for compensation, renovations on target housing, as those terms are defined by 40 C.F.R. § 745.83 and Section 401 of TSCA, 15 U.S.C. § 2681. Second, the Complaint alleges that Respondent is a "firm," as defined by 40 C.F.R. § 745.83, and asserts all other facts necessary to establish Respondent's violation of the Renovation, Repair, and Painting Rule requirements alleged in Counts 1 through 9. Given that Respondent is in default for failure to file a timely answer to the Complaint, and because such default constitutes an admission by Respondent of all facts alleged in the Complaint, the Complaint therefore sets forth a prima facie case of TSCA violations and default order against Respondent is appropriate.

D. The Proposed Penalty is Consistent with the Record of the Proceeding and TSCA

When the Presiding Officer "determines that a violation has occurred and the complaint seeks a civil penalty," Rule 22.27(b) of the Consolidated Rules of Practice provides that

the Presiding Officer shall determine the amount of the recommended civil penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the [particular statute authorizing the proceeding at issue].⁶

⁶ See 40 C.F.R. § 22.3(a) (defining "Act").

The Presiding Officer shall consider any civil penalty guidelines issued under the Act.

40 C.F.R. § 22.27(b). Furthermore, where an initial decision recommending a civil penalty assessment is reached by default order, the Consolidated Rules of Practice instruct that “[t]he relief proposed in the complaint or the motion for default shall be ordered [by the Presiding Officer] unless the requested relief is clearly inconsistent with the record of the proceeding or the Act.” 40 C.F.R. § 22.17(c).

1. Penalty Criteria

a. *Statutory Civil Penalty Criteria*

At the time of Respondent’s alleged violation, Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provided that any person who violates Section 409 of TSCA, 15 U.S.C. § 2689, “shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation.” Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and implemented by the EPA at 40 C.F.R. Part 19, the statutory maximum penalty under Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), was increased to \$37,500 for violations that occur between January 12, 2009, and November 2, 2015. In determining the amount of a civil penalty assessed under TSCA, Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), instructs that

the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

b. *EPA's Civil Penalty Guidelines*

In August 2010, the EPA issued the “Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule” (“ERPP”). Exh. M. The purpose of the ERPP is to assist EPA enforcement personnel in determining the appropriate enforcement response and civil penalty amount for violations of TSCA under the Renovation, Repair, and Painting Rule. The goal of the ERPP is to “provide fair and equitable treatment of the regulated community, predictable enforcement responses, and comparable penalty assessments for comparable violations, with flexibility to allow for individual facts and circumstances of a particular case.” *Id.* at p. 2.

Following the EPA’s 1984 civil penalty guidance,⁷ the ERPP provides a two-part framework for calculating appropriate civil penalty amounts for independently assessable violations. First, enforcement personnel compute a preliminary penalty figure, consisting of the amount of economic benefit realized by a respondent as a result of its noncompliance in addition to a “gravity-based” component that reflects the seriousness of the violations. Second, enforcement personnel then determine whether upward or downward adjustments to the gravity-based penalty are warranted based on the violator’s ability to pay/ability to continue in business; the violator’s history of prior such violations; the violator’s degree of culpability; and such other matters as justice may require.

⁷ See EPA General Enforcement Policy #GM-21, *Policy on Civil Penalties* (Feb. 16, 1984); EPA General Enforcement Policy #GM-22, *A Framework for Statute-Specific Approaches to Penalty Assessments: Implementing EPA’s Policy on Civil Penalties* (Feb. 16, 1984).

2. Penalty Calculation

a. *Preliminary Penalty Amount*

i. Economic Benefit of Noncompliance

The economic benefit component of a civil penalty removes any significant economic and competitive advantage of a respondent's noncompliance with the law. The ERPP provides that "[a]n economic benefit component should be calculated . . . when a violation results in 'significant' economic benefit to the violator. 'Significant' is defined as an economic benefit that totals more than \$50 per room renovated per renovation project for all applicable violations alleged in the complaint." *Id.* at pp. 11-12. Because Complainant has determined that the economic benefit resulting to Respondent was less than \$50 per room for each violation alleged in the Complaint, and therefore not "significant" as defined in the ERPP, an economic benefit component was not included in the proposed penalty assessment.

ii. Gravity-Based Penalty

The "gravity-based" component of a civil penalty is calculated to reflect the seriousness of a violation. This component is necessary to achieve the specific and general deterrence goals of a civil penalty assessment by placing the violator in a worse position than those who comply with the law.⁸ Under the ERPP, the gravity-based penalty is determined by consideration of (i) the nature of the violation; (ii) the circumstances of the violation; and (iii) the extent of harm that may result from a given violation. *Id.* at p. 9. The "nature" of a violation refers to the "essential character of the violation," specifically whether the regulatory provision violated is "hazard

⁸ See EPA General Enforcement Policy #GM-21, *Policy on Civil Penalties* (Feb. 16, 1984) ("[T]he penalty should persuade the violator to take precautions against falling into noncompliance again (specific deterrence) and dissuade others from violating the law (general deterrence). . . . If a penalty is to achieve deterrence, both the violator and the general public must be convinced that the penalty places the violator in a worse position than those who have complied in a timely fashion.").

assessment”⁹ or “chemical control”¹⁰ in nature. *Id.* at p. 14. The “circumstance” of a violation, on the other hand, represents “the probability of harm resulting from a particular violation.”

Id. at p. 15. Finally, the “extent” of a violation corresponds to “the degree, range, or scope of a violation’s potential for harm,” the primary consideration being “whether the specific violation could have a serious or significant or minor impact on human health” *Id.* at p. 16.

These factors are incorporated into a penalty matrix found in Appendix B of the ERPP, which specifies the appropriate gravity-based penalty for a given violation based on subjective tiers within each factor. Appendix A of the ERPP assigns a “Circumstance Level” to each regulatory provision of the Renovation, Repair, and Painting Rule, taking into account both the “circumstance” and “nature” factors of the specific violation. The “circumstance” of a violation is categorized as “High,” “Medium,” or “Low,” and each of these category has two levels, for a total of six categories.¹¹ Each “circumstance” category is further designated with an “a” or “b,” corresponding to the “nature” of the violation as either “chemical control” or “hazard assessment” in nature, respectively. *Id.* at pp. A-1 through A-10 & n. 48. Taken together, these factors permit a total of twelve potential “Circumstance Levels,” upon which the highest penalties are assessed for violations that are “chemical control” in nature and have a “high probability of impacting human health and the environment.” *See id.* at pp. 14-16; Appendices A and B.

⁹ Regulatory requirements are “chemical control” in nature when “they are aimed at limiting exposure and risk presented by lead-based paint by controlling how lead-based paint is handled by renovators” Exh. M at p. 14.

¹⁰ Regulatory requirements are “hazard assessment” in nature when they are “designed to provide owners and occupants of target housing . . . with information that will allow them to weigh and assess the risks presented by renovations and to take proper precautions to avoid unnecessary exposure . . . that may be created during a renovation or abatement activity.” Exh. M at p. 14.

¹¹ The “circumstance” level “High” encompasses Levels 1 and 2; “Medium” corresponds to Levels 3 and 4; and “Low” captures Levels 5 and 6. *See* Exh. M at pp. 15-16.

As with the “circumstance” and “nature” factors, the “extent” factor is tiered into categories—“Major,” “Significant,” and “Minor”—based upon three determinable facts: (1) the age of any children who occupy target housing; (2) whether a pregnant woman occupies target housing; and (3) whether a child or children under six years of age had access to the child-occupied facility during renovations/abatement. *Id.* at pp. 16-17. As relevant here, the ERPP instructs that the “extent” of a violation falls in the “Minor” extent category “[w]here a respondent is able to demonstrate to EPA’s satisfaction that no individuals younger than eighteen were residing in the target housing at the time of the violation” *Id.*

Having determined the “Circumstance Level” of a violation by reference to Appendix A and the “extent” factor by consideration of the age and/or pregnancy of occupants in the target housing, the appropriate penalty amount is then selected in the matrix table in Appendix B. *See id.* at p. B-2 (specifying gravity-based penalties for violations occurring after January 12, 2009). The cell at which the “Circumstance Level” and “extent” factor intersect in this table is the gravity-based penalty deemed appropriate for the specific violation alleged.

In this case, all violations alleged in the Complaint were assigned an “extent” category of “Minor”: Count 1 received this designation because Respondent is considered a “very small firm,”¹² and Counts 2 through 9 were so designated because the property subject to Respondent’s renovation was unoccupied during the renovation and at the time of the EPA’s inspection. *Compl.* at pp. 14-15. As for the “circumstance” and “extent” categories, Appendix A of the ERPP assigns the following “Circumstance Levels” to the regulatory provisions underlying the alleged violations:

¹² Exh. M at p. A-3, n. 49 (“For a self-employed renovator or very small firm (<4 employees), the ‘Extent’ category is usually ‘minor’ for ‘offering to perform’ renovations.”).

Count	Regulatory Provision	Circumstance Level
1.	40 C.F.R. § 745.81(a)(2)(ii)	Level 3a
2.	40 C.F.R. § 745.84(a)(1)	Level 1b
3.	40 C.F.R. § 745.89(d)(2)	Level 3a
4.	40 C.F.R. § 745.85(a)(1)	Level 1b
5.	40 C.F.R. § 745.85(a)(2)(i)(A)	Level 2a
6.	40 C.F.R. § 745.85(a)(2)(i)(C)	Level 2a
7.	40 C.F.R. § 745.85(a)(2)(i)(D)	Level 2a
8.	40 C.F.R. § 745.85(a)(4)(i)	Level 2a
9.	40 C.F.R. § 745.85(a)(4)(ii)	Level 2a

Applying the “Circumstance Level” and “extent” category to the penalty matrix in Appendix B, Complainant selected the following gravity-based penalty amounts for each alleged violation:

Count	Preliminary Gravity-Based Penalty
1.	\$4,500
2.	\$2,840
3.	\$4,500
4.	\$2,840
5.	\$6,000
6.	\$6,000
7.	\$6,000
8.	\$6,000
9.	\$6,000
TOTAL	\$44,680

b. Adjustment Factors

In accordance with TSCA’s civil penalty criteria,¹³ the ERPP provides a number of factors that enforcement personnel may consider to modify the gravity-based penalty calculated from Appendix B. These factors include the violator’s ability to pay/ability to continue in business, history of prior such violations, degree of culpability, and such other matters as justice may require, including the violator’s voluntary disclosure of violations, attitude during

¹³ See *supra* Section C.1.a. (describing statutory penalty criteria stated at Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(1)).

negotiations, and any other case-specific facts that justify further reduction of the penalty. *See id.* at pp. 17-24. Respondent did not engage the EPA either before or after the filing of the Complaint, therefore Complainant is unable to justify adjustments to the gravity-based penalty based upon Respondent's ability to pay or to continue in business, degree of culpability, or attitude during negotiations. Additionally, the EPA is not aware of any prior violations by Respondent nor other facts surrounding the alleged violations that warrant an extraordinary penalty reduction. Accordingly, because the EPA has no additional information pertinent to adjustment factors stated in TSCA and the ERPP, Complainant did not increase or decrease the preliminary gravity-based penalty requested in the Complaint.

c. Final Penalty

The final civil penalty amount proposed for Respondent's violations of the Renovation, Repair, and Painting Rule alleged in Counts 1 through 9 of the Complaint is \$44,680. Compl. ¶ 63. Complainant calculated this civil penalty pursuant to the statutory civil penalty criteria recited in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), and in accordance with applicable civil penalty guidelines provided in the ERPP. Having properly considered all available evidence in this case in light of applicable statutory penalty factors and civil penalty guidelines, Complainant's proposed civil penalty is consistent with the record of the proceeding and TSCA.

IV. CONCLUSION

Based on the foregoing, Complainant respectfully requests that this Court find Respondent in default for failure to file a timely answer to the Complaint. Furthermore, Complainant also respectfully requests that this Court issue a default order, in the form of an

initial decision, finding Respondent liable for the TSCA violations alleged in Counts 1 through 9 of the Complaint and assessing a \$44,680 civil penalty against Respondent.

RESPECTFULLY SUBMITTED,
this 28th day of March, 2018,



Jared Pessetto
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7

CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Memorandum of Points and Authorities in Support of Complainant's Motion for Default Order was hand-delivered to the Regional Hearing Clerk of the U.S. Environmental Protection Agency, Region 7, at 11201 Renner Boulevard, Lenexa, Kansas, on March 28, 2018.

A true and correct copy of the foregoing document was also sent by certified mail, return receipt requested, on March 28, 2018 to:

Mr. Cory Poulsen
Superior Restoration & Construction LLC
23625 West 92nd Terrace
Lenexa, Kansas 66227

and to:

Mr. Cory Poulsen
Superior Restoration & Construction LLC
7861 Mastin Drive
Overland Park, Kansas 66204.



Jared Pessetto
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7

Limited Liability Company Articles of Organization

The name of the Limited Liability Company:

Superior Restoration & Construction LLC

File date: 12/05/2013

File time: 13:25:53

Business Entity ID Number: 7623549

Registered Office in Kansas:

- 23625 W 92nd Terrace
- Lenexa, Kansas
- 66227

Name of the resident agent at the registered office:

Cory W Poulsen

Mailing address for official mail:

- Superior Restoration & Construction LLC
- 23625 W 92nd Terrace
- Lenexa, KS
- 66227 USA

Name of the organizer(s):

Cory W Poulsen

I/We declare under penalty of perjury under the laws of the state of Kansas that the foregoing is true and correct.

Execution date: 12/05/2013

The signature(s) of the organizer(s):

Cory W Poulsen

Cory W Poulsen

Exh. A



I, Kris W. Kobach, Secretary of State of Kansas, do hereby certify that this is the true and correct copy of the original document filed electronically on 12/05/2013.

Kris W. Kobach

Kansas Secretary of State

Memorial Hall, 1st floor - 120 SW 10th Ave. - Topeka, Kansas 66612-1594
phone: (785) 296-4564 - email: kssos@kssos.org - url: www.kssos.org

KANSAS SECRETARY OF STATE
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Exh. A

Limited Liability Company Annual Report



1. LLC Name: SUPERIOR RESTORATION & CONSTRUCTION LLC
2. Business Entity ID No.: 7623549
3. Tax Closing Date: December 2014
4. State of Organization: KS
5. Official Mailing Address:
23625 W 92nd Terrace, LENEXA KS 66227

6. Members who own 5% or more of capital (Kansas LLCs only):

Cory Poulsen - 23625 W 92nd Terr Lenexa, KS 66227

Federal Employer Identification Number (FEIN): 0000000000

"I declare under penalty of perjury pursuant to the laws of the state of Kansas that the foregoing is true and correct."

Executed on April 14 2015

Signature of Member: Cory Poulsen

**Electronic File Stamp
Information:**

Filed

* Date: 04/14/2015

* Time: 10:09:24 PM

KANSAS SECRETARY OF STATE
NON-CERTIFIED WEB COPY
3/28/2018 9:14:55 AM

Limited Liability Company Annual Report



- 1. LLC Name: SUPERIOR RESTORATION & CONSTRUCTION LLC
- 2. Business Entity ID No.: 7623549
- 3. Tax Closing Date: December 2015
- 4. State of Organization: KS
- 5. Official Mailing Address:
23625 W 92nd Terrace, LENEXA KS 66227

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Federal Employer Identification Number (FEIN): 0000000000

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Executed on April 26 2016

Signature of Member: Cory Poulsen

Electronic File Stamp
Information:

Filed

* Date: 04/26/2016

* Time: 03:43:39 PM

KANSAS SECRETARY OF STATE
NON-CERTIFIED WEB COPY
3/28/2018 9:15:41 AM

Limited Liability Company Annual Report



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- 2. Business Entity ID No.: 7623549
- 3. Tax Closing Date: December 2016
- 4. State of Organization: KS
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Federal Employer Identification Number (FEIN): 0000000000

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Executed on May 08 2017

Signature of Member: Cory Poulsen

Electronic File Stamp
Information:

Filed

* Date: 05/08/2017

* Time: 09:24:25 AM

KANSAS SECRETARY OF STATE
NON-CERTIFIED WEB COPY
3/28/2018 9:16:14 AM



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

11201 Renner Boulevard
Lenexa, Kansas 66219

FEB 16 2016

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Article No.: 7014 1200 0000 6124 2521

Mr. Cory W. Poulsen
Registered Agent
Superior Restoration & Construction LLC
23625 West 92nd Terrace
Lenexa, Kansas 66227

Re: Pre-Filing Negotiations for Lead-Based Paint Renovation, Repair, and Painting Rule Violations
EPA ID # 3600089043

Dear Mr. Poulsen:

Lead is a highly toxic substance that presents significant environmental and health concerns. Lead poisoning in children is a common, yet preventable, environmental health problem in the United States and can result in a variety of negative health effects. These health effects include reduced intelligence quotient; reading and learning disabilities; impaired hearing; reduced attention span; hyperactivity and behavior problems; and in severe cases, coma and death. Primary sources of lead contamination include deteriorating paint, lead dust, and soil found in and around residences built before 1978.

Under the authority of the Toxic Substances Control Act (TSCA), the EPA issued the Renovation, Repair, and Painting Rule to address lead-based paint hazards created by renovation, repair, and painting activities that disturb lead-based paint in most housing built before 1978 and in child-occupied facilities. Where firms and individuals perform for compensation renovations of pre-1978 housing and child-occupied facilities, the Renovation, Repair, and Painting Rule requires renovators to be certified and to utilize specific work practices to minimize lead-based paint hazards for workers and occupants. Additionally, prior to the start of renovations on regulated housing, the firm performing renovations must provide to an adult occupant and/or the owner of the unit a copy of the EPA-approved pamphlet *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*, and must obtain written acknowledgment of receipt from the occupant and/or owner that the pamphlet was received.

Violations of the TSCA Renovation, Repair, and Painting Rule

The EPA conducted an on-site inspection of your work site located at 3415 Charlotte Street, in Kansas City, Missouri, on September 17, 2015. The inspection was conducted under the authority of TSCA § 11 to determine your compliance with the requirements of TSCA, and specifically with the Renovation, Repair, and Painting Rule, 40 C.F.R. Part 745, which implements TSCA § 402(c)(3), 15 U.S.C. § 2682(c)(3). A copy of the inspection report was mailed to you on September 29, 2015.

Exh. C

We have completed our review of the inspection report and have determined that the following violations of TSCA §§ 402(c)(3) and 406(b) and/or the Code of Federal Regulations have occurred:

- Failure of a firm that performs, offers, or claims to perform renovations or dust sampling for compensation to obtain initial certification, as required by 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a)(1);
- Failure of a firm to provide the owner and/or occupant of the unit with an EPA-approved informational pamphlet, as required by 40 C.F.R. § 745.84(a)(1)-(2);
- Failure of a firm to ensure that a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90, as required by 40 C.F.R. § 745.89(d)(2);
- Failure of a firm to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area, as required by 40 C.F.R. § 745.85(a)(1);
- Failure of a firm to remove all objects from the work area or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed, as required by 40 C.F.R. § 745.85(a)(2)(i)(A);
- Failure of a firm to close windows and doors in the work area and cover doors with plastic sheeting or other impermeable material, as required by 40 C.F.R. § 745.85(a)(2)(i)(C);
- Failure of a firm to cover the floor surface with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater, as required by 40 C.F.R. § 745.85(a)(2)(i)(D);
- Failure of a firm to contain waste from renovation activities before the waste is removed from the work area for storage or disposal, as required by 40 C.F.R. § 745.85(a)(4)(i); and
- Failure of a firm to store waste from renovation activities under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris at the conclusion of each work day and at the conclusion of the renovation, as required by 40 C.F.R. § 745.85(a)(4)(ii).

The EPA believes that a formal enforcement action is appropriate for these violations. Accordingly, the agency intends to file an administrative complaint within the next 60 days seeking assessment of civil penalties. Violators may be subject to a penalty of as much as \$37,500 per violation of TSCA and the Renovation Repair and Painting Rule.

The EPA calculates proposed penalties for Renovation, Repair, and Painting Rule violations pursuant to the Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule (LBP Consolidated ERPP), which is available on the agency's Web site at <http://www2.epa.gov/enforcement/revised-interim-final-consolidated-enforcement-response-and-penalty-policy-pre>. Pursuant to TSCA § 16(a)(2)(B), and as reflected in the LBP Consolidated ERPP, the EPA considers the nature, circumstances, extent, and

gravity of the violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

Opportunity for Pre-Filing Negotiations

While the EPA believes it is appropriate to proceed with a formal enforcement action, we also recognize that resolution of this matter may be better accomplished by conducting negotiations prior to the agency's filing of an administrative complaint. By this letter we are offering you the opportunity to negotiate settlement of the proposed penalty. Settlement of this matter through payment of a civil penalty and any injunctive relief must be memorialized in a Consent Agreement and Final Order to be signed by you and the EPA within 60 days of your receipt of this letter. As part of these pre-filing negotiations, the agency will consider any additional information you provide that is relevant to the violations or proposed penalty.

If you are interested in participating in pre-filing negotiations, please contact me at (913) 551-7793 within 10 calendar days of your receipt of this letter. If, however, you choose not to participate in pre-filing negotiations, or if we are unable to resolve this matter within 60 days of your receipt of this letter, the EPA intends to proceed with a formal administrative complaint in which the terms of this offer will no longer be available.

Invitation to Submit Financial Information

The EPA is currently implementing a pilot program for addressing "micro-businesses" under the LBP Consolidated ERPP. Under this pilot penalty program, the EPA may consider reducing civil penalties assessed against respondents with annual sales or gross pre-tax revenue of \$300,000 or less. If you have financial information supporting your eligibility for this pilot micro-business program, please provide this information to the EPA as soon as possible.

In addition, if you believe that Superior Restoration & Construction does not have the financial ability to pay the EPA's proposed penalty and you would like the agency to consider your company's financial condition, you must provide the agency with appropriate financial documentation to substantiate your claim within the first 30 days of the 60-day pre-filing negotiations period. Such documentation shall include three years of signed federal income tax returns and financial statements, and a completed financial ability to pay form that I will provide to you upon request. Financial documents should be mailed to me at the following address:

Jared Pessetto
Assistant Regional Counsel
U.S. EPA, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

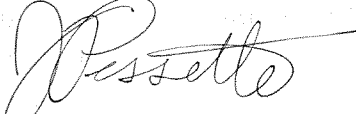
Supplemental Environmental Projects

You may also wish to consider mitigating a portion of the penalty by performing a Supplemental Environmental Project. A SEP is a project purchased or performed by a violator that provides significant environmental benefits and has a connection to the environmental harm threatened or caused by the violations. A full description of the EPA's policies concerning the use of SEPs in settlement actions can

be found on the agency's Web site at <http://www2.epa.gov/enforcement/supplemental-environmental-projects-seps>.

As indicated above, the EPA's inspection of your work site identified serious violations of TSCA and the Renovation, Repair, and Painting Rule that warrant the assessment of a civil penalty. However, the agency is committed to working with you to resolve this matter and believes that pre-filing negotiations offer all parties an opportunity to reach settlement without protracted litigation. Your immediate attention to this matter is greatly appreciated. If you have any questions, please do not hesitate to contact me at (913) 551-7793, or Candace Bednar from EPA's Lead-Based Paint Program at (913) 551-7562.

Sincerely,



Jared Pessetto

Assistant Regional Counsel

Enclosure

1. Additional Sources of Information

Additional Sources of Information

- Information on lead and the EPA's lead-based paint regulations:
www.epa.gov/lead
- Information on the EPA's Supplemental Environmental Project policy:
<http://www.epa.gov/enforcement/supplemental-environmental-projects-seps>
- Revised Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule:
<http://www2.epa.gov/enforcement/revised-interim-final-consolidated-enforcement-response-and-penalty-policy-pre>
- Federal Register Notice, Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22:
<http://www2.epa.gov/enforcement/consolidated-rules-practice-40-cfr-part-22-administrative-assessment-civil-penalties>

If you are unable to access the Internet and you would like to request a hard copy of the Lead-Based Paint Consolidated Enforcement Response and Penalty Policy or 40 C.F.R. Part 22, please call the contact listed in the letter.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**

Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

OFFICIAL BUSINESS
Penalty for Private Use \$300

CNSL/CMBR

Handwritten: 3-19
3-1
3-8



7014 1200 0000 6124 2521

Mr. Cory W. Poulsen, Registered Agent
Superior Resto
23625 W 92nd
Lenexa, KS 6

66219 09601
6622775044

NIXIE 641 7E 1 . 0003/13/16
 RETURN TO SENDER
 ATTEMPTED - NOT KNOWN
 UNABLE TO FORWARD
 RC: 66219960101 *1228-01558-17-35

neopost
 02/16/2016
US POSTAGE
\$06.75
 FIRST-CLASS MAIL
 ZIP 66219
 041L11243986

ENTERED TO THE ADDRESS OF THE RETURNED TO THE
MAILING TO THE ADDRESS OF THE RETURNED TO THE

SENDER: COMPLETE THIS SECTION

- ☐ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☐ Print your name and address on the reverse so that we can return the card to you.
- ☐ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Cory W. Poulsen
Registered Agent
Superior Restoration & Constr' LLC
23625 West 92nd Terrace
Lenexa, KS 66227

2. Article Number
(Transfer from service label)

PS Form 3811, July 2013

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail® ☐ Priority Mail Express™
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee) ☐ Yes

Article No. 7014 1200 0000 6124 2521

7014 1200 0000 6124 2521

Exh. C



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

11201 Renner Boulevard
Lenexa, Kansas 66219

MAR 18 2016

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Article No.: 7014 1200 0000 6124 0855

Mr. Cory Poulsen
Superior Restoration & Construction LLC
9202 Nieman Road
Overland Park, Kansas 66214

Re: Pre-Filing Negotiations for Lead-Based Paint Renovation, Repair, and Painting Rule Violations
EPA ID # 3600089043

Dear Mr. Poulsen:

Lead is a highly toxic substance that presents significant environmental and health concerns. Lead poisoning in children is a common, yet preventable, environmental health problem in the United States and can result in a variety of negative health effects. These health effects include reduced intelligence quotient; reading and learning disabilities; impaired hearing; reduced attention span; hyperactivity and behavior problems; and in severe cases, coma and death. Primary sources of lead contamination include deteriorating paint, lead dust, and soil found in and around residences built before 1978.

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Exh. D

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Jared Pessetto
Assistant Regional Counsel
U.S. EPA, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

Supplemental Environmental Projects

You may also wish to consider mitigating a portion of the penalty by performing a Supplemental Environmental Project. A SEP is a project purchased or performed by a violator that provides significant environmental benefits and has a connection to the environmental harm threatened or caused by the violations. A full description of the EPA's policies concerning the use of SEPs in settlement actions can

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Sincerely,

Jared Pessetto
Assistant Regional Counsel

Enclosure

1. Additional Sources of Information

Additional Sources of Information

- Information on lead and the EPA's lead-based paint regulations:
www.epa.gov/lead
- Information on the EPA's Supplemental Environmental Project policy:
<http://www.epa.gov/enforcement/supplemental-environmental-projects-seps>
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<http://www2.epa.gov/enforcement/revised-interim-final-consolidated-enforcement-response-and-penalty-policy-pre>
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If you are unable to access the Internet and you would like to request a hard copy of the Lead-Based Paint Consolidated Enforcement Response and Penalty Policy or 40 C.F.R. Part 22, please call the contact listed in the letter.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY**

Region 7

11201 Renner Boulevard
Lenexa, Kansas 66219

OFFICIAL BUSINESS

Penalty for Private Use \$300

CNSL/CMBR

CERTIFIED MAIL



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

7014 1200 0000 6124 0055

neopost

03/18/2016

US POSTAGE

\$06.735

FIRST-CLASS MAIL

ZIP 66219

041L11243986

Mr. Cory Poulsen

Superior Rest

9202 Nieman

Overland Park

66219-0661

662141668

641 N7E 1 S15T0003/19/16
RETURN TO SENDER
SUPERIOR RESTORATION & CONSTRU
MOVED LEFT NO ADDRESS
UNABLE TO FORWARD
RETURN TO SENDER
RC: 66219960101 *1228-05586-19-37

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Cory Poulsen

**Superior Restoration & Construction LLC
9202 Nieman Rd
Overland Park, KS 66214**

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

B. Received by (Printed Name)

☐ Addressee

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail® ☐ Priority Mail Express™

☐ Registered

☐ Insured Mail

☒ Return Receipt for Merchandise ☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number

(Transfer from service label)

Article No. 7014 1200 0000 6124 0855

PS Form 3811, July 2013

Domestic Return Receipt



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

11201 Renner Boulevard
Lenexa, Kansas 66219

MAR 24 2016

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Article No.: 7014 1200 0000 6124 0916

Mr. Cory W. Poulsen
Superior Restoration & Construction LLC
23625 West 92nd Terrace
Lenexa, Kansas 66227

Re: Pre-Filing Negotiations for Lead-Based Paint Renovation, Repair, and Painting Rule Violations
EPA ID # 3600089043

Dear Mr. Poulsen:

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Exh. E

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- Failure of a firm to close windows and doors in the work area and cover doors with plastic sheeting or other impermeable material, as required by 40 C.F.R. § 745.85(a)(2)(i)(C);
- Failure of a firm to cover the floor surface with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater, as required by 40 C.F.R. § 745.85(a)(2)(i)(D);
- Failure of a firm to contain waste from renovation activities before the waste is removed from the work area for storage or disposal, as required by 40 C.F.R. § 745.85(a)(4)(i); and
- Failure of a firm to store waste from renovation activities under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris at the conclusion of each work day and at the conclusion of the renovation, as required by 40 C.F.R. § 745.85(a)(4)(ii).

The EPA believes that a formal enforcement action is appropriate for these violations. Accordingly, the agency intends to file an administrative complaint within the next 60 days seeking assessment of civil penalties. Violators may be subject to a penalty of as much as \$37,500 per violation of TSCA and the Renovation Repair and Painting Rule.

The EPA calculates proposed penalties for Renovation, Repair, and Painting Rule violations pursuant to the Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule (LBP Consolidated ERPP), which is available on the agency's Web site at <http://www2.epa.gov/enforcement/revised-interim-final-consolidated-enforcement-response-and-penalty-policy-pre>. Pursuant to TSCA § 16(a)(2)(B), and as reflected in the LBP Consolidated ERPP, the EPA considers the nature, circumstances, extent, and

gravity of the violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

Opportunity for Pre-Filing Negotiations

While the EPA believes it is appropriate to proceed with a formal enforcement action, we also recognize that resolution of this matter may be better accomplished by conducting negotiations prior to the agency's filing of an administrative complaint. By this letter we are offering you the opportunity to negotiate settlement of the proposed penalty. Settlement of this matter through payment of a civil penalty and any injunctive relief must be memorialized in a Consent Agreement and Final Order to be signed by you and the EPA within 60 days of your receipt of this letter. As part of these pre-filing negotiations, the agency will consider any additional information you provide that is relevant to the violations or proposed penalty.

If you are interested in participating in pre-filing negotiations, please contact me at (913) 551-7793 within 10 calendar days of your receipt of this letter. If, however, you choose not to participate in pre-filing negotiations, or if we are unable to resolve this matter within 60 days of your receipt of this letter, the EPA intends to proceed with a formal administrative complaint in which the terms of this offer will no longer be available.

Invitation to Submit Financial Information

The EPA is currently implementing a pilot program for addressing "micro-businesses" under the LBP Consolidated ERPP. Under this pilot penalty program, the EPA may consider reducing civil penalties assessed against respondents with annual sales or gross pre-tax revenue of \$300,000 or less. If you have financial information supporting your eligibility for this pilot micro-business program, please provide this information to the EPA as soon as possible.

In addition, if you believe that Superior Restoration & Construction does not have the financial ability to pay the EPA's proposed penalty and you would like the agency to consider your company's financial condition, you must provide the agency with appropriate financial documentation to substantiate your claim within the first 30 days of the 60-day pre-filing negotiations period. Such documentation shall include three years of signed federal income tax returns and financial statements, and a completed financial ability to pay form that I will provide to you upon request. Financial documents should be mailed to me at the following address:

Jared Pessetto
Assistant Regional Counsel
U.S. EPA, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

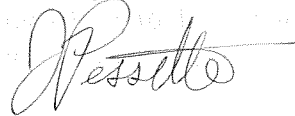
Supplemental Environmental Projects

You may also wish to consider mitigating a portion of the penalty by performing a Supplemental Environmental Project. A SEP is a project purchased or performed by a violator that provides significant environmental benefits and has a connection to the environmental harm threatened or caused by the violations. A full description of the EPA's policies concerning the use of SEPs in settlement actions can

be found on the agency's Web site at <http://www2.epa.gov/enforcement/supplemental-environmental-projects-seps>.

As indicated above, the EPA's inspection of your work site identified serious violations of TSCA and the Renovation, Repair, and Painting Rule that warrant the assessment of a civil penalty. However, the agency is committed to working with you to resolve this matter and believes that pre-filing negotiations offer all parties an opportunity to reach settlement without protracted litigation. Your immediate attention to this matter is greatly appreciated. If you have any questions, please do not hesitate to contact me at (913) 551-7793, or Candace Bednar from EPA's Lead-Based Paint Program at (913) 551-7562.

Sincerely,



Jared Pessetto

Assistant Regional Counsel

Enclosure

1. Additional Sources of Information

Additional Sources of Information

- Information on lead and the EPA's lead-based paint regulations:
www.epa.gov/lead
- Information on the EPA's Supplemental Environmental Project policy:
<http://www.epa.gov/enforcement/supplemental-environmental-projects-seps>
- Revised Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule:
<http://www2.epa.gov/enforcement/revised-interim-final-consolidated-enforcement-response-and-penalty-policy-pre>
- Federal Register Notice, Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22:
<http://www2.epa.gov/enforcement/consolidated-rules-practice-40-cfr-part-22-administrative-assessment-civil-penalties>

If you are unable to access the Internet and you would like to request a hard copy of the Lead-Based Paint Consolidated Enforcement Response and Penalty Policy or 40 C.F.R. Part 22, please call the contact listed in the letter.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

Region 7

11201 Renner Boulevard
Lenexa, Kansas 66219

OFFICIAL BUSINESS

Penalty for Private Use \$300

CNSL/CMRR

UNITED STATES MAIL



7014 1200 0000 6124 0916

neopost

03/24/2016

US POSTAGE

\$06.73

FIRST-CLASS MAIL



ZIP 66219

041L11243986

0018-28
4/12
4/12

Mr. Cory W. Poulsen
Superior Restoration & Construction LLC
23625 W 92nd
Lenexa, KS

6621909601
6622737504 R072

641 DE 1 .0004/18/16
RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD
BC: 66219960101 *0228-03113-22-23

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Cory W. Poulsen
Superior Restoration & Construction LLC
23625 W 92nd Ter
Lenexa, KS 66227

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail® ☐ Priority Mail Express™
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
 (Transfer from service label)

Article No. 7014 1200 0000 6124 0916

PS Form 3811, July 2013

Domestic Return Receipt

MEMORANDUM

TO: Candace Bednar
FROM: John Leftwich
DATE: 06/13/2016

RE: Serving Pre-file Letter on Cory W. Poulsen
Superior Restoration & Construction LLC
EPA ID # 3600089043

On June 10, 2016, I attempted to deliver in person the attached Pre-Filing letter to Mr. Cory W. Poulsen of Superior Restoration & Construction LLC.

23625 West 92nd Terrace in Lenexa, Kansas, appears to be Mr. Poulsen's residence. The home is occupied, and there was a "crew" cab pickup truck parked in the driveway. There was no response when I knocked on the door, or rang the doorbell.


I then proceeded to the last known business address, 9202 Nieman Road, Overland Park, Kansas. This location now is occupied by Home Renovation Service, (913) 491-5000. I spoke to Mr. Greg Strand, who said he did not know where Mr. Poulsen could be located. He said that, shortly after moving in, Mr. Poulsen had picked up a package there, but otherwise had not been seen. Mr. Strand's business card is attached.

Most on line research shows one or the other of the above addresses, but as the office move is fairly recent, that is easy to understand. One search provided a different address, 7861 Mastin Street in Overland Park, which is a small office/warehouse strip. If you like, we could try there too.


JTL



9202 Nieman Rd. Overland Park, KS 66214
Office: (913) 491-5000 Fax: (855) 805-6295

 **Greg Strand**
VP of Operations
greg.hrs@gmail.com
hrskansascity.com

Exh. F

MEMORANDUM

TO: Candace Bednar
FROM: John Leftwich
DATE: 06/14/2016

RE: Delivering Pre-Filing Negotiations Letter
Superior Restoration & Construction LLC
EPA ID #3600089043

Following an unsuccessful attempt to deliver the above letter to the facility on 06/10, I did some further research. This turned up an oblique reference to another address, as noted in my memorandum of 06/13 (attached).

On June 13, 2016, I drove to 7861 Mastin Drive in Overland Park, Kansas. This is in an older strip of offices/warehouses, and there was no signage for Superior Restoration & Construction LLC. The door was locked, but soon was answered by a woman who identified herself as Heather Stuart, Office Maanager for Superior. I showed her my credentials, and left a business card.

She said that Mr. Poulsen was not in, but that she would be sure he got the letter. She said they still are in the process of completing the move to this new location, and had not had time to put up a sign. After a brief discussion about their continuing to operate the same business under the same name, I left the premises at 3:40 p.m.


JTL

Exh. G

BEFORE THE U. S. ENVIRONMENTAL PROTECTION AGENCY, REGION 7
11201 Renner Boulevard
Lenexa, Kansas 66219

IN THE MATTER OF:)
Name: Superior Restoration & Construction LLC) AFFIDAVIT OF DELIVERY OF
7861 Mastin Drive) PRE-FILING NEGOTIATIONS
City/State: Overland Park, Kansas 66204) LETTER
Respondent)

The Affiant undersigned, first being duly sworn, upon oath, deposes and says:

1. Attached hereto is a copy of a Pre-Filing Negotiations Letter mailed to Respondent by the United States Environment Protection Agency (EPA). Two attempts to deliver the said Letter by United States Postal Service through Certified Mail were unsuccessful.
2. I delivered the said letter to the following named person on the date stated at the place stated:

Person Served: Ms. Heather Stuart, Office Manager of Superior Restoration & Construction LLC

Date of Service: June 13, 2016

Time of Service: 3:40 p.m.

Place of Service: 7861 Mastin Drive, Overland Park, Kansas 66204

3. I effected service of the said letter in the manner checked below:

X By handing the said letter into the hands of the person named above and leaving the said subpoena with the said person.

By substituted service, that is, by delivering the said letter into the hands of _____ an individual of suitable age and discretion who was at the place of business of the person named in Paragraph 2 above and is believed by me to be employed by that place of business, and leaving the said letter with said individual.

Dated: 06/15/2016

Affiant: _____

Inspector's Name

SUBSCRIBED AND SWORN TO before me, the undersigned Notary Public, this 15th day of June, 2016.



Milady R. Peters
NOTARY PUBLIC in and for the State of Kansas,
Residing at Johnson County, KS.

Exh. H



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

11201 Renner Boulevard
Lenexa, Kansas 66219

AUG 16 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Article No.: 7014 1200 0000 6124 9339

Mr. Cory Poulsen
Superior Restoration & Construction LLC
7861 Mastin Drive
Overland Park, Kansas 66204

Re: In the Matter of Superior Restoration & Construction LLC
Docket No. TSCA-07-2016-0017
EPA ID # 3600089043

Dear Mr. Poulsen:

As you are aware, on June 13, 2016, the U.S. Environmental Protection Agency, Region 7, served upon Superior Restoration & Construction LLC a pre-filing letter inviting you to participate in negotiations regarding a proposed administrative penalty action for violations of the Toxics Substance Control Act. These violations occurred during the renovation of residential housing located at 3415 Charlotte Street in Kansas City, Missouri. The EPA conducted an on-site inspection of your work site at this location on September 17, 2015, and a copy of the inspection report was mailed to you on September 29, 2015.

As discussed in the EPA's June 13 pre-filing letter, you are allowed 10 calendar days from your receipt of the letter to contact the Agency to initiate pre-filing negotiations. Because you have not contacted me since your receipt of the Agency's pre-filing letter, the EPA has filed the enclosed Complaint and Notice of Opportunity for Hearing seeking assessment of a civil penalty for the TSCA violations alleged therein. Although the EPA has filed this Complaint you still have the opportunity to negotiate settlement of the alleged violations.

Your prompt attention to this matter is greatly appreciated. If you have any questions regarding the enclosed Complaint or your options in settlement, please contact me at (913) 551-7793.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Pessetto".

Jarek Pessetto
Assistant Regional Counsel

Enclosures



Printed on Recycled Paper

Exh. I

COPY

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

U. S. ENVIRONMENTAL PROTECTION AGENCY

REGION 7

2016 AUG 16 AM 8: 17

11201 RENNER BOULEVARD

LENEXA, KANSAS

BEFORE THE ADMINISTRATOR

In the matter of

**SUPERIOR RESTORATION
& CONSTRUCTION LLC,**

Respondent.

Docket. No. TSCA-07-2016-0017

COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

This Complaint and Notice of Opportunity for Hearing ("Complaint") serves as notice that the United States Environmental Protection Agency, Region 7 ("EPA" or "Agency"), has reason to believe that Superior Restoration & Construction LLC ("Respondent"), has violated Section 409 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*, promulgated pursuant to 15 U.S.C. §§ 2682, 2686, and 2687.

COMPLAINT

Jurisdiction

1. 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 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"), a copy of which is enclosed with this Complaint.

Parties

2. Complainant, by delegation from the Administrator of the EPA, is the Chief of the Toxics and Pesticides Branch in the Water, Wetlands and Pesticides Division, EPA, Region 7.

3. Respondent Superior Restoration & Construction LLC is a limited liability company operating under the laws of the state of Kansas.

Exh. I

Statutory and Regulatory Background

4. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the “Act”), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. One of the stated purposes of the Act is to implement a broad program to reduce lead-based paint hazards in the Nation’s housing stock. 42 U.S.C. § 4851a(2). The Act amended TSCA by adding *Title IV—Lead Exposure Reduction*, Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

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

6. Pursuant to Section 402(a) of TSCA, 15 U.S.C. § 2682(a), the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart L, *Lead-Based Paint Activities*. See Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities, 61 Fed. Reg. 45778, 45813 (Aug. 29, 1996). Pursuant to Section 406(b) and Section 407 of TSCA, 15 U.S.C. §§ 2686(b) and 2687, the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*. See Lead; Requirements for Hazard Education Before Renovation of Target Housing, 63 Fed. Reg. 29908, 29919 (June 1, 1998). Finally, pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), the EPA amended and re-codified regulations at 40 C.F.R. Part 745, Subparts E and L, and added additional regulations at 40 C.F.R. Subpart L (“Renovation, Repair, and Painting Rule”). See Lead; Renovation, Repair, and Painting Program, 73 Fed. Reg. 21692, 21758 (Mar. 31, 2008).

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

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

9. The regulation at 40 C.F.R. § 745.83 defines “renovation” as the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by 40 C.F.R. § 745.223. The term renovation includes, but is not limited to, the removal, modification, or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather stripping); and interim controls that disturb painted surfaces.

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

11. The regulation at 40 C.F.R. § 745.83 defines “firm” as a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

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

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

14. The regulation at 40 C.F.R. § 745.87(d) provides that violators may be subject to civil sanctions pursuant to Section 16 of TSCA, 15 U.S.C. § 2615. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides that any person who violates Section 409 of TSCA, 15 U.S.C. § 2689, shall be liable to the United States for a civil penalty of up to \$25,000 for each such violation. Each day that such a violation continues constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. § 2689. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$37,500 for violations that occur after January 12, 2009.

General Factual Allegations

15. On or about September 17, 2015, and pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the EPA conducted an inspection at 3415 Charlotte Street in Kansas City, Missouri (“the Property”), to evaluate Respondent’s compliance with TSCA and the requirements of the Renovation, Repair, and Painting Rule (“EPA inspection”). A copy of the inspection report was mailed to Respondent on September 29, 2015.

16. Respondent is, and at all times referred to herein was, a limited liability company operating under the laws of the state of Kansas.

17. Respondent, at all times referred to herein, was a “person” and “firm” as defined by 40 C.F.R. § 745.83.

18. At the time of the EPA inspection and at all times relevant to this Complaint, Respondent was engaged in a “renovation” of the Property as defined by 40 C.F.R. § 745.83.

Exh. I

The EPA inspection revealed that renovations commenced at the Property on or about September 10, 2015, and included removal of an 8-by-7 foot wall and the replacement of 13 windows.

19. At all times relevant to this Complaint, Respondent's renovation was a "renovation for compensation" per 40 C.F.R. § 745.82(a). At the time of the EPA inspection, a private party owned the Property and hired Respondent to perform the renovations described in paragraph 18.

20. At all times relevant to this Complaint, the Property was "target housing" as defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17). The EPA inspection and subsequent investigation revealed that the Property was built in 1904.

21. At all times relevant to this Complaint, the Property was unoccupied. Children less than six years of age neither occupied nor were present at the Property at the time of Respondent's renovation and the EPA inspection.

22. As a result of the EPA inspection and additional information obtained by the Agency, Complainant has determined that violations of the Renovation, Repair, and Painting Rule and Section 409 of TSCA, 15 U.S.C. § 2689, occurred as a result of Respondent's renovation activities at the Property.

Alleged Violations

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

Count 1

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

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

26. The EPA inspection revealed that Respondent had not applied for or obtained certification from the EPA to perform renovations or dust sampling prior to performing the renovation on the Property. Furthermore, the renovation did not qualify for one of the exceptions identified in 40 C.F.R. § 745.82.

27. Respondent's failure to apply to the EPA for certification pursuant to 40 C.F.R. § 745.89(a)(1) prior to performance of the renovation on the Property is a violation of 40 C.F.R. § 745.81(a)(2)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Exh. I

Count 2

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

29. Pursuant to 40 C.F.R. § 745.84(a)(1), firms performing renovation activities in any residential dwelling unit of target housing must provide the owner of the unit with the EPA pamphlet entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* (“EPA Pamphlet”) no more than 60 days before beginning the renovation.

30. The EPA inspection revealed that Respondent did not provide the owner of the Property with the EPA Pamphlet before beginning renovation activities on the Property.

31. Respondent’s failure to provide the owner of the Property with the EPA Pamphlet before beginning renovation activities is a violation of 40 C.F.R. § 745.84(a)(1). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 3

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

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

34. The EPA inspection revealed that Respondent did not assign a certified renovator to the renovation performed on the Property.

35. Respondent’s failure to ensure that a certified renovator was assigned to the renovation that the firm performed on the Property is a violation of 40 C.F.R. § 745.89(d)(2). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 4

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

37. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(1) requires firms to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area.

38. The EPA inspection revealed that Respondent failed to post protective signs as required by 40 C.F.R. § 745.85(a)(1). Photographs obtained by the EPA inspector show that caution tape and warning signs were not posted around the yard, front porch, or interior living spaces of the Property where renovation and waste-collection activities were occurring.

39. Respondent's failure to post signs clearly defining the work area and warning occupants and other persons not involved in renovation to remain outside of the work area is a violation of 40 C.F.R. § 745.85(a)(1) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 5

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

41. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(2)(i)(A) requires firms to remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

42. The EPA inspection revealed that Respondent did not remove objects from the work area. Photographs obtained by the EPA inspector show drinking glasses, pots and pans, a microwave, window blinds, and other household items present and uncovered in the kitchen where renovation activities were ongoing. Additionally, the EPA inspection revealed that where Respondent had covered with plastic sheeting certain objects left on kitchen cabinets and countertops, the edges of such plastic sheeting were not sealed to the floor.

43. Respondent's failure to remove all objects from the work area or cover them with sealed plastic sheeting or other impermeable material is a violation of 40 C.F.R. § 745.85(a)(2)(i)(A) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 6

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

45. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(2)(i)(C) requires firms to close windows and doors in the work area and cover doors with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be 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.

46. The EPA inspection revealed that Respondent did not cover doors with plastic sheeting or other impermeable material. Photographs obtained by the EPA inspector show building supplies and renovation waste on and around the front porch of the Property. Such photographs also show that the front porch entry door to the Property is not covered with plastic sheeting or other impermeable material.

47. Respondent's failure to cover all doors in the work area with plastic sheeting or other impermeable material is a violation of 40 C.F.R. § 745.85(a)(2)(i)(C) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 7

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

49. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(2)(i)(D) requires firms to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

50. The EPA inspection revealed that Respondent did not cover the floor surface in the work area with taped-down plastic sheeting or other impermeable material. Photographs obtained by the EPA inspector show that the kitchen and adjoining dining room floors were not covered where renovation activities were ongoing.

51. Respondent's failure to cover the floor surface in the work area with taped-down plastic sheeting or other impermeable material is a violation of 40 C.F.R. § 745.85(a)(2)(i)(D) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 8

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

53. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(4)(i) requires firms to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.

54. The EPA inspection revealed that Respondent did not contain waste from renovation activities at the Property before the waste was removed from the work area for storage or disposal. Photographs obtained by the EPA inspector show a large pile of construction and renovation waste on the front lawn of the Property. Additionally, windows removed from the Property were lined up against a tree in the yard. The inspection photographs show dust and debris on the lawn and sidewalk leading to the front porch of the Property.

55. Respondent's failure to contain waste from renovation activities in order to prevent releases of dust and debris before the waste was removed from the work area for storage or disposal is a violation of 40 C.F.R. § 745.85(a)(4)(i) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 9

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

57. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 40 C.F.R. § 745.85(a)(4)(ii) requires firms, at the conclusion of each work day and at the conclusion of the renovation, to ensure that waste that has been collected from renovation activities is stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

58. The EPA inspection revealed that Respondent did not ensure that waste collected from renovation activities was stored under containment at the conclusion of each work day. Photographs obtained by the EPA inspector show a large pile of construction and renovation waste on the front lawn of the Property, as well as old windows lined up against a tree. The EPA inspection revealed that the renovations commenced on September 10, 2015, and at the time of the EPA inspection on September 17, 2015, Respondent was engaged in finishing work on the interior of the Property.

59. Respondent's failure to ensure that waste collected from renovation activities was stored under containment at the conclusion of each work day is a violation of 40 C.F.R. § 745.85(a)(4)(ii) pursuant to 40 C.F.R. § 745.81(a)(4)(ii). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Relief Requested

60. Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615, for violations of Section 409 of TSCA, 15 U.S.C. § 2689. Pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and based upon the facts set forth above, it is proposed that a civil penalty be assessed against Respondent.

61. 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 Respondent, the company's ability to pay, the effect on its ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

62. In order to assess a penalty for the violations alleged in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to the 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 to particular cases the statutory penalty factors enumerated above.

63. Complainant proposes that Respondent be assessed a civil penalty in the amount of Forty-Four Thousand Six-Hundred and Eighty Dollars (\$44,680) for the TSCA violations alleged in this Complaint. Attachment 1 to this Complaint provides documentation of Complainant's basis for the civil penalty proposed in this Complaint.

64. Complainant's civil penalty request is based on the best information available to the EPA at the time of this Complaint's issuance. The proposed penalty may be adjusted in the EPA's discretion if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate civil penalty amount.

Payment of Proposed Penalty in Full

65. Respondent may resolve this proceeding at any time by paying the full penalty proposed in the Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk. Payment of the total civil penalty of Forty-Four Thousand Six-Hundred and Eighty Dollars (\$44,680) may be made by certified or cashier's check made payable to "Treasurer, United States of America," and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

A copy of the check or other payment must simultaneously be sent to:

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

and to:

Exh. I

Jared Pessetto
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

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

Payment of Proposed Penalty in Lieu of an Answer

66. Respondent may resolve this proceeding by paying the proposed penalty in full instead of filing an answer to the Complaint within thirty (30) days of receipt of the Complaint, in accordance with the procedures set forth above. If Respondent wishes to resolve this proceeding by paying the proposed penalty in full instead of filing an answer but needs additional time to pay the penalty, Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint, in accordance with Rule 22.18(a)(1) of the Consolidated Rules of Practice. The written statement shall state that Respondent agrees to pay the proposed penalty in full within sixty (60) days of receipt of the Complaint. The written statement need not contain any response to, or admission of, the allegations in the Complaint. Respondent must then pay the full amount of the proposed penalty within sixty (60) days of receipt of the Complaint. Failure to pay the full penalty within sixty (60) days of receipt of the Complaint may subject Respondent to default, as set forth below.

NOTICE OF OPPORTUNITY FOR HEARING

Answer and Request for Hearing

67. Respondent must file a written answer within thirty (30) days of receipt of this Complaint if Respondent: (a) contests any material fact upon which this Complaint is based; (b) contends that the penalty proposed in this Complaint is inappropriate; or (c) contends that it is entitled to judgment as a matter of law. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the answer shall so state. Failure to admit, deny, or explain any of the factual allegations in the Complaint constitutes an admission of the allegation. The answer shall also state: (d) the circumstances or arguments which are alleged to constitute the grounds of any defense; (e) the facts that Respondent disputes; (f) the basis for opposing the proposed penalty; and (g) whether a hearing is requested.

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

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

A copy of the answer shall be sent to:

Jared Pessetto
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

69. After the filing of Respondent's Answer to the Complaint, the Hearing Clerk at EPA Headquarters will serve as the Regional Hearing Clerk, and all further filings in this matter (except for the filing of a Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.18(b)(3)) must be filed with the Hearing Clerk at the following addresses, as appropriate:

If using the U.S. Postal Service:

Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mailcode 1900R
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

If using UPS/FedEx/DHL:

Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Avenue NW
Washington, D.C. 20460

Default

70. If, within thirty (30) days of receipt of a Complaint, Respondent fails to:
(a) submit full payment of the proposed penalty; (b) submit a written statement to the Regional Hearing Clerk that Respondent agrees to pay the penalty within sixty (60) days of receipt of the Complaint; or (c) file a written answer to the Complaint, Respondent may be found in default. Default by Respondent constitutes, for the purposes of this proceeding, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalty proposed in the Complaint shall be assessed unless the Presiding Officer finds that the proposed penalty is clearly inconsistent with the record of the proceeding or TSCA.

Informal Settlement Conference

71. The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of TSCA and the regulations upon which this action is based. Regardless of whether Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request an informal settlement conference please contact:

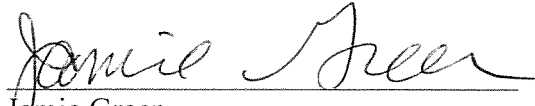
Jared Pessetto
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Office: (913) 551-7793

72. Any settlement which may be reached as a result of such a conference shall be recorded in a written consent agreement signed by all parties or their representatives and shall conform with the provisions of Section 22.18(b)(2) of the Consolidated Rules of Practice. No settlement or consent agreement shall dispose of this proceeding without a final order from the Regional Judicial Officer or the Regional Administrator.

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


**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 8/15/2016



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

Date: 7/26/2016



Jared Pessetto
Assistant Regional Counsel
Office of Regional Counsel

Address of Target Housing	Year Built	Children (ages)	Date of Contract	Date Work Performed	Deviations/Deficiencies
3415 Charlotte Street, Kansas City, Missouri 64109	1904	None	Unknown	9/10/2015- 9/17/2015	Failure to comply with Subpart E— Residential Property Renovation

Violation	Extent	Circumstance	Gravity Based Penalty	Micro-Business Penalty (\$100,001-\$300,000)	Micro-business Penalty (\$100,000 or Less)
1. 40 C.F.R. §§ 745.81(a)(2)(ii) & 745.89(a)(1)—Failure to obtain initial firm certification from EPA.	Minor* *See ERPP, p. A-3, n. 49	Level 3a	4,500	600	450
2. 40 C.F.R. § 745.84(a)(1)—Failure to provide property owner with the EPA-approved lead hazard information pamphlet.	Minor	Level 1b	2,840	380	280
3. 40 C.F.R. § 745.89(d)(2)—Failure to assign a certified renovator.	Minor	Level 3a	4,500	600	450
4. 40 C.F.R. § 745.85(a)(1)—Failure to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area; to prepare, to the extent practicable, signs in the primary language of the occupants; and/or to post signs before beginning the renovation and makes sure they remain in place and readable until post-renovation cleaning verification have been completed.	Minor	Level 1b	2,840	380	280
5. 40 C.F.R. § 745.85(a)(2)(i)(A)—Failure to remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.	Minor	Level 2a	6,000	800	600
6. 40 C.F.R. § 745.85(a)(2)(i)(C)—Failure to close windows and doors in the work area and cover doors with plastic sheeting or other impermeable material; doors used as an entrance to the work area must be 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.	Minor	Level 2a	6,000	800	600
7. 40 C.F.R. § 745.85(a)(2)(i)(D)—Failure to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.	Minor	Level 2a	6,000	800	600

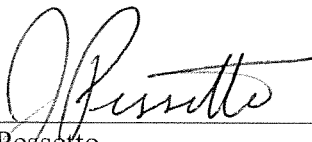
Violation		Extent	Circumstance	Gravity Based Penalty	Micro-Business Penalty (\$100,001-\$300,000)	Micro-business Penalty (\$100,000 or Less)
8.	40 C.F.R. § 745.85(a)(4)(i)—Failure to contain waste from renovation activities to prevent releases of dust and debris before waste is removed from the work area for storage or disposal and/or failure to cover chute if it is used to remove waste from the work area.	Minor	Level 2a	6,000	800	600
9.	40 C.F.R. § 745.85(a)(4)(ii)—Failure, at the conclusion of each work day and at the conclusion of the renovation, to ensure that waste that has been collected from renovation activities is stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.	Minor	Level 2a	6,000	800	600
TOTAL				\$44,680	\$5,960	\$4,460

CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Complaint and Notice of Opportunity for Hearing were hand-delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219, on August 16, 2016.

A true and correct copy of the foregoing Complaint and Notice of Opportunity for Hearing, together with a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, and the EPA's "Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule" were sent by certified mail, return receipt requested, on August 16, 2016, to:

Cory Poulsen
Superior Restoration & Construction LLC
7861 Mastin Drive
Overland Park, Kansas 66204.



Jared Pessetto
Assistant Regional Counsel
Office of Regional Counsel



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

11201 Renner Boulevard
Lenexa, Kansas 66219

29 AUG 2016

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Article No.: 7014 1200 0000 6124 9216

Cory Poulsen
Superior Restoration & Construction LLC
7861 Mastin Drive
Overland Park, Kansas 66204.

Re: In the matter of Superior Restoration & Construction LLC
Docket No. TSCA-07-2016-0017

Dear Mr. Poulsen:

Enclosed for your files is a copy of the EPA's recent filing in the matter of Superior Restoration & Construction LLC, Docket No. TSCA-07-2016-0017. This document, which offers proof of service of the Complaint and Notice of Opportunity for Hearing, was filed with the Regional Hearing Clerk for EPA Region 7 on August 29, 2016.

Should you have any questions, please contact me at (913) 551-7793.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Pessetto".

Jared Pessetto
Assistant Regional Counsel




Enclosure



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Exh. J

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See Reverse for Instructions	

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<p>B. Received by (Printed Name)</p>	<p>C. Date of Delivery</p>										
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August 19, 2016 , 1:04 am	Departed USPS Facility	KANSAS CITY, MO 64121
August 17, 2016 , 8:52 pm	Arrived at USPS Facility	KANSAS CITY, MO 64121

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CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Proof of Service of Complaint and Notice of Opportunity for Hearing was hand-delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, at 11201 Renner Boulevard, Lenexa, Kansas, on August 29, 2016.

A true and correct copy of the foregoing Filing of Affidavit of Service of Complaint and Notice of Opportunity for Hearing was sent by certified mail, return receipt requested, on August 29, 2016, to:

Mr. Cory Poulsen
Superior Restoration & Construction LLC
7861 Mastin Drive
Overland Park, Kansas 66204.



Jared Pessetto
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7

7014 1200 0000 6124 9216

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AUG 29 2016

Sent To	Cory Poulsen
Street, Apt. No., or PO Box No.	Superior Restoration & Costruction LLC 7861 Mastin Dr
City, State, ZIP+4	Overland Park, KS 66204

PS Form 3800, August 2006

See Reverse for Instructions

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<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>Cory Foulson Superior Restoration & Construction LLC 7861 Mastin Dr Overland Park, KS 66204</p>		<p>A. Signature X  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <input type="checkbox"/> C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>	
		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p>	
		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>2. Article Number (Transfer from service label)</p> <p>PS Form 3811, July 2013</p>		<p>Article No. 7014 1200 0000 6124 9216</p> <p>Domestic Return Receipt</p>	

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SEPTEMBER
2016 ⓘ

by

8:00pm ⓘ

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September 1, 2016 at 9:37 am
DELIVERED, LEFT WITH INDIVIDUAL
OVERLAND PARK, KS 66204

Tracking History



September 1, 2016, 9:37 am

Delivered, Left with Individual
OVERLAND PARK, KS 66204

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September 1, 2016, 7:52 am

Out for Delivery
OVERLAND PARK, KS 66212

September 1, 2016, 7:42 am

Sorting Complete
OVERLAND PARK, KS 66212

September 1, 2016, 5:11 am

Arrived at Unit

OVERLAND PARK, KS 66212

August 31, 2016, 7:53 pm

Departed USPS Regional Facility

KANSAS CITY MO DISTRIBUTION CENTER

August 30, 2016, 7:13 pm

Arrived at USPS Regional Facility

KANSAS CITY MO DISTRIBUTION CENTER

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7**

11201 Renner Boulevard
Lenexa, Kansas 66219

22 SEP 2016

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Article No.: 7014 1200 0000 6124 9223

Mr. Cory Poulsen
Superior Restoration & Construction LLC
7861 Mastin Drive
Overland Park, Kansas 66204

Re: NOTICE OF INTENT TO INSTITUTE DEFAULT PROCEEDINGS
In the Matter of Superior Restoration & Construction LLC
Docket No. TSCA-07-2016-0017
EPA ID # 3600089043

Dear Mr. Poulsen:

This letter provides notice that the U.S. Environmental Protection Agency, Region 7 ("EPA"), intends to institute default proceedings in the above-referenced matter if, within 20 days of your receipt of this notice, Superior Restoration & Construction LLC does not file a written Answer to the Complaint filed by EPA on August 16, 2016.

Pursuant to Rule 22.15 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), you are required to file a written response to the Complaint within 30 days of your receipt of the Complaint. Such a written response is known as an "Answer." Failure to file an Answer subjects Superior Restoration & Construction LLC to default proceedings that may require the company to pay the full penalty amount proposed in the Complaint, \$44,680, without any further proceedings.

Our records indicate that a representative of your company received and signed for the Complaint on August 19, 2016. Pursuant to Rule 22.15, Superior Restoration & Construction LLC had until September 19, 2016, to timely file an Answer. That deadline has since passed.

I strongly encourage you to file an Answer as soon as possible. Your Answer should be sent to:

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

Exh. K

The Consolidated Rules of Practice also require you to send a copy of any such Answer to me at:

Jared Pessetto
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

I also encourage you to contact me directly to discuss your company's opportunity for informal settlement negotiations with EPA. If you choose to do so, I can be reached by phone at (913) 551-7793 or by Email at pessetto.jared@epa.gov. If you do not file an Answer or contact me within 20 days, EPA intends to file a Motion for Default Order with the Regional Judicial Officer seeking assessment of the \$44,680 civil penalty proposed in the Complaint.

Your prompt attention to this matter is greatly appreciated. If you have any questions concerning this Notice of Intent to Institute Default Proceedings, you should immediately call me at (913) 551-7793.

Sincerely,



Jared Pessetto
Assistant Regional Counsel

Exh. K

7014 1200 0000 6124 9223

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**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)**

Interim Final Policy

August, 2010

**United States Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Office of Civil Enforcement
Waste and Chemical Enforcement Division**

Exh. M

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Section 1: Introduction, Overview and Background

I. Introduction

This document sets forth guidance for the U.S. Environmental Protection Agency (EPA or the Agency) to use in determining the appropriate enforcement response and penalty amount for violations of Title IV of the Toxic Substances Control Act (TSCA) which gives the Agency the authority to address lead-based paint (LBP) and LBP hazards in target housing, and other buildings and structures. The goal of this consolidated Enforcement Response and Penalty Policy (ERPP) is to provide fair and equitable treatment of the regulated community, predictable enforcement responses, and comparable penalty assessments for comparable violations, with flexibility to allow for individual facts and circumstances of a particular case. The Renovation, Repair, and Painting Rule (RRP Rule),¹ Pre-Renovation Education Rule (PRE Rule),² and Lead-Based Paint Activities, Certification, and Training Rule (LBP Activities Rule)³ were each promulgated under the authority of Title IV of TSCA and are addressed in this ERPP.⁴

This guidance applies only to violations of EPA's civil regulatory programs. It does not apply to enforcement pursuant to criminal provisions of laws or regulations that are enforced by EPA. The procedures set forth in this document are intended solely for the guidance of government professionals. They are not intended and cannot be relied on to create rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with this policy and to change it at any time without public notice. This policy is not binding on the Agency. Enforcement staff should continue to make appropriate case-by-case enforcement judgments, guided by, but not restricted or limited to, the policies contained in this document.

This Policy is immediately effective and applicable, and it supersedes any enforcement response or penalty guidance previously drafted or issued for the PRE Rule or LBP Activities Rule.

II. Overview of the Policy

This ERPP is divided into four main sections. The first section, "Introduction, Overview and Background" provides the statutory and regulatory setting for this policy. The second section, "Determining the Level of Enforcement Response," describes the Agency's options for

¹ 40 C.F.R. Part 745, Subparts E, L and Q (73 Fed. Reg. 21692; April 22, 2008) (amending the PRE Rule, LBP Activities Rule, and State/Tribal Programs Rule, respectively, at §§ 745.80-745.91, § 745.220, § 745.225, § 745.320, § 745.324, § 745.326, § 745.327, § 745.339). www.epa.gov/lead/pubs/renovation.htm#tenants, or www.gpoaccess.gov.

² 40 C.F.R. Part 745, Subpart E (§§ 745.80-745.88) (63 Fed. Reg. 29907; June 1, 1998).

³ 40 C.F.R. Part 745, Subpart L (§§ 745.220 – 745.239) (61 Fed. Reg. 45778; August 29, 1996, as amended 64 Fed. Reg. 42849; August 6, 1999).

⁴ The § 1018 Disclosure Rule is addressed in a separate ERPP available in Appendix C at TSCA Enforcement Policy and Guidance Documents.

Section 1: Introduction, Overview and Background

responding to violations of TSCA. The third section, “Assessing Civil Administrative Penalties,” elaborates on EPA’s policy and procedures for calculating civil penalties against persons who violate section 409 of TSCA by failing or refusing to comply with the regulatory requirements of the PRE, RRP and LBP Activities Rules. The forth section, the appendices, contains, among other things, tables to be used in calculating civil penalties for this policy. The appendices to this ERPP are: Appendix A - Violations and Circumstance Levels; Appendix B - Gravity-Based Penalty Matrices; Appendix C - References for Policy Documents; Appendix D - List of Supplemental Environmental Projects (SEPs).

III. Background

In 1992, the United States Congress enacted Title X - Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 United States Code (U.S.C.) § 4851 (enacted as Title X of the Housing and Community Development Act of 1992). Section 1021 of Title X amended the Toxic Substances Control Act to add Title IV, entitled “Lead Exposure Reduction.”

Pursuant to Section 406(b) of TSCA, EPA promulgated regulations at 40 C.F.R. Part 745, Subpart E, residential property renovations, requiring, among other things, persons who perform for compensation a renovation of pre-1978 housing (“target housing”) to provide a lead hazard information pamphlet to the owner and occupant prior to commencing the renovation.

Pursuant to Section 402(a) of TSCA, EPA promulgated regulations at 40 C.F.R. Part 745, Subpart L, Lead-Based Paint Activities, prescribing procedures and requirements for the accreditation of training programs and renovations, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, work practice standards for performing such activities, and delegation of programs.

Pursuant to Section 402(c)(3) of TSCA, EPA promulgated regulations amending at 40 C.F.R. Part 745, Subparts E and L, residential property renovations, prescribing procedures and requirements for the accreditation of training programs, certification of individuals and firms, work practice standards for renovation, repair and painting activities in target housing and child occupied facilities, and delegation of programs (Subpart Q) under Section 404.

Pursuant to Section 408 of TSCA, each department, agency, and instrumentality of the executive, legislative, and judicial branches of the federal government is subject to all federal, state, interstate, and local requirements, both substantive and procedural, regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.⁵

⁵ Therefore, federal agencies are subject to the PRE, RRP, and LBP Activities Rules ERPP and EPA has statutory penalty authority over federal agencies for violations of the LBP, LBP activities and LBP hazard requirements (15 U.S.C. § 2688). Regions generally must notify and consult with OECA’s Federal Facilities Enforcement Office prior to bringing an enforcement action against a federal agency. See, Appendix C, Memorandum, *Redelegation of Authority and Guidance on Headquarters Involvement in Regulatory Enforcement Cases*.

Section 2: Determining the Level of Enforcement Response

The failure or refusal to comply with any requirement of the PRE, RRP, or LBP Activities Rules is a prohibited act under Section 409 of TSCA (15 U.S.C. § 2689) and civil penalties can be assessed to address such violations pursuant to Section 16 of TSCA (15 U.S.C. § 2615) for each violation of Section 409. A civil penalty action is the preferred enforcement response for most violations.

Once the Agency finds that a violation of TSCA has occurred, it will need to determine the appropriate level of enforcement response for the violation.⁶ EPA can respond with a range of enforcement response options. These options include:

- Civil Administrative Complaints
- Notices of Noncompliance
- Civil Judicial Referrals
- Criminal Proceedings

I. Civil Administrative Complaints

A civil administrative complaint⁷ is the appropriate response to violations of the PRE, RRP, and LBP Activities Rules or failure to comply with a Notice of Noncompliance. Violators may be subject to civil administrative action including the assessment of civil penalties, with or without conditions, pursuant to 15 U.S.C. § 2615(a). Civil penalties are to be assessed by the Administrator by an order made on the record, after the violator is given a written notice and opportunity to request a hearing on the order, within 15 days of the date the notice is received by the violator.

A civil administrative complaint may include a proposed penalty that has been calculated pursuant to this policy. Alternatively, the complaint may specify the number of violations for which a penalty is sought, a brief explanation of the severity of each violation alleged, and a recitation of the statutory penalty authority applicable for each violation in the complaint.⁸ This latter approach would not eliminate the need for EPA to specify a proposed penalty during the course of the administrative litigation and explain in writing how the proposed penalty was calculated in accordance with 15 U.S.C. § 2615, but would postpone the requirement until after the filing of pre-hearing information exchanges, at which time each party shall have exchanged all factual information considered relevant to the assessment of a penalty.⁹

⁶ See, Appendix C, TSCA Enforcement Policy and Guidance Documents, Memorandum, *Final List of Nationally Significant Issues and Process for Raising Issues to TPED*; November 1, 1994 or current revision. The NSI guidance was developed as implementation guidance to a memorandum, *Redelegation of Authority and Guidance on Headquarters Involvement in Regulatory Enforcement Cases*, Steven A. Herman, July 11, 1994.

⁷ A pre-filing notice or letter may be issued prior to the filing of a civil administrative complaint.

⁸ See, 40 C.F.R. § 22.14(a)(4).

⁹ See, 40 C.F.R. § 22.19(a)(4).

Section 2: Determining the Level of Enforcement Response

A civil administrative action can result in an enforceable agreement and the assessment of a penalty or a decision rendered by an Administrative Law Judge.¹⁰ Before an administrative penalty order becomes final, the Administrator must provide each Respondent, including federal agencies, with notice and an opportunity for a formal hearing, on the record,¹¹ in accordance with the Administrative Procedures Act. EPA's general rules of administrative practice are set forth in 40 C.F.R. Part 22, entitled "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits."

II. Notices of Noncompliance

On a case-by-case basis, EPA may determine that the issuance of a notice of noncompliance (NON),¹² rather than a civil administrative complaint is the most appropriate enforcement response to a violation.¹³ A NON should be issued to address violations in the following circumstances:

- i. Where a first time violator's violation has low probability of re-occurrence¹⁴ and low potential for harm; or
- ii. When a violator is in substantial compliance with the requirement as the specific facts and circumstances support.

A NON should, when necessary:

- i. Require corrective action by a specified date to return the violator to full compliance and resolve the violation(s);
- ii. Specify the type and nature of the corrective action necessary to return the violator to full compliance.

¹⁰ EPA may, at its discretion, issue a press release or advisory to notify the public of the filing of an enforcement action, settlement, or adjudication concerning a person's violation of TSCA. A press release can be a useful tool to notify the public of Agency actions for TSCA noncompliance and specifically, to educate the public on the requirements of LBP Program. The issuance of a press release or advisory as well as the nature of their contents are within the sole discretion of the Agency and shall not be subject to negotiation with the violator. See, *Restrictions on Communicating with Outside Parties Regarding Enforcement Actions*, March 8, 2006.

¹¹ See, 15 U.S.C. § 2615(a)(2)(A).

¹² A NON is not a formal enforcement action since there is no opportunity to respond to the notice on the record.

¹³ Supplementary guidance on this issuance of NONs in lieu of complaints may be provided for specific situations.

¹⁴ For example, if the same violation occurred on several occasions (e.g., a renovation firm failed to comply with the PRE Rule at 3 separate renovations including 3 units in a multi-unit renovation project), a NON should not be issued because the renovation firm demonstrated a pattern and practice of repeated violations.

Section 2: Determining the Level of Enforcement Response

- iii. Require proof that the corrective action was taken by the specified date to demonstrate to the Agency's satisfaction that further action is not necessary to resolve the violation(s) and prevent recurrence; and
- iv. Be placed in the violator's inspection, case development report record, or other file to document the Agency's response.

A NON should not:

- i. Be issued to a violator for a subsequent violation of a provision of the same rule (e.g., the RRP Rule) reoccurring within 5 years; or
- ii. Impose a monetary penalty.

III. Civil Judicial Referrals

EPA may ask the United States Department of Justice (DOJ) to seek injunctive relief in United States District Court under Section 17(a) of TSCA, 15 U.S.C. § 2616(a), to direct a violator to comply with the PRE, RRP, or LBP Activities Rules.

Civil Administrative Penalty and Injunction Relief: There may be instances in which the concurrent filing of a civil administrative complaint for penalty and a request for civil judicial injunctive relief under TSCA is appropriate.

IV. Criminal Proceedings

This ERPP does not address criminal violations of TSCA. However, if the civil case team has reason to believe that a violator knowingly violated any provision of TSCA, it should promptly refer the matter to the Criminal Investigation Division (CID). TSCA's criminal penalties are found in Section 16(b).¹⁵ In addition, pursuant to 18 U.S.C. Section 1001, it is a criminal violation to knowingly and willfully make a false or fraudulent statement in any matter within EPA's jurisdiction. In addition, it may be considered a criminal violation to knowingly or willfully falsify information provided to the Agency.

V. Parallel Criminal and Civil Proceedings

Although the majority of EPA's enforcement actions are brought as either a civil action or a criminal action, there are instances when it is appropriate to bring both a civil and a criminal action. These include situations where the violations merit the deterrent and retributive effects of

¹⁵ See, 15 U.S.C. § 2615(b).

Section 2: Determining the Level of Enforcement Response

criminal enforcement, yet a civil action is also necessary to obtain an appropriate remedial result, and where the magnitude or range of the environmental violations and the available sanctions make both criminal and civil enforcement appropriate.

Active consultation and cooperation between EPA's civil and criminal programs, in conformance with all legal requirements, including OECA's policy on parallel proceedings,¹⁶ are critical to the success of EPA's overall enforcement program. The success of any parallel proceedings depends upon coordinated decisions by the civil and criminal programs as to the timing and scope of their activities. For example, it will often be important for the criminal program to notify civil enforcement managers that an investigation is about to become overt or known to the subject. Similarly, the civil program should notify the criminal program when there are significant developments that might change the scope of the relief. In every parallel proceeding, communication and coordination should be initiated at both the staff and management levels and should continue until resolution of all parallel matters.

¹⁶ See, Appendix C, TSCA Enforcement Policy and Guidance Documents, Memorandum, *Parallel Proceedings Policy*, Granta Y. Nakayama, September 24, 2007.

Section 3: Assessing Civil Administrative Penalties

I. Computation of the Penalty

In determining the amount of any civil penalty for violations of the PRE, RRP, or LBP Activities Rules, "...the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require."¹⁷ On September 10, 1980, EPA published "Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy"¹⁸ which describes in greater detail the "civil penalty system" under TSCA. The purpose of this system is to ensure that civil penalties are assessed in a fair, uniform and consistent manner; that the penalties are appropriate for the violation committed; that economic incentives for violating TSCA are eliminated and the penalty is a sufficient deterrent to future violations. The TSCA civil penalty system provides standard definitions and a calculation methodology for application of the statutory penalty factors that TSCA requires the Administrator to consider in assessing a civil penalty. The TSCA civil penalty system also states that as regulations are developed, specific penalty guidelines, such as this ERPP, will be developed adopting in detail the application of the general civil penalty system to the new regulation. In developing a proposed penalty, EPA will take into account the particular facts and circumstances of each case, with specific reference to the TSCA statutory penalty factors. This ERPP follows the general framework described in the 1980 "Guidelines" for applying the TSCA statutory penalty factors to violations in civil administrative enforcement cases.¹⁹

For each violation, the penalty amount is determined in a multi-step process:

1. Determine the number of independently assessable violations.
2. Determine the economic benefit.²⁰ One component of the total penalty is the estimated amount of economic benefit the respondent realized from non-compliance. This calculation is also subject to adjustment based on the violator's ability to pay/ability to continue in business. Considerations for calculating economic benefit are discussed in Item III "Economic Benefit of Noncompliance" and Item V "Ability to Pay/Continue in Business," of this Section.²¹

¹⁷ See, 15 U.S.C. 2615(a)(2)(B)

¹⁸ See, Appendix C, TSCA Enforcement Policy and Guidance Documents, *Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*, 45 Fed. Reg. 59771, September 10, 1980. The Guidelines focus on what the proper civil penalty should be if a decision is made that a civil penalty is the proper enforcement remedy. The Guidelines do not discuss whether the assessment of a civil penalty is the correct enforcement response to a specific violation.

¹⁹ EPA will not apply civil administrative penalty policies in civil judicial context, but rather will apply statutory factors.

²⁰ Determining economic benefit is not specifically required by the Act, but is authorized under the "as justice may require" factor of 15 U.S. C. § 2615(a)(2)(B). See, 45 Fed. Reg. 59771, September 10, 1980.

²¹ See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

Section 3: Assessing Civil Administrative Penalties

3. Determine the gravity-based penalty. The other component of the total penalty is the gravity-based penalty. Under the TSCA Civil Penalty Guidelines, gravity-based penalties are determined in two stages:
 - a. The first stage is the determination of a gravity-based penalty (GBP) (gravity refers to the overall seriousness of the violation). To determine the gravity-based penalty, the following factors are considered:
 - i. The nature of the violation;
 - ii. The circumstances of the violation; and
 - iii. The extent of harm that may result from a given violation.

These factors are incorporated into the penalty matrices in Appendix B that specify the appropriate gravity-based penalty²² and are discussed in more detail in Item IV of this section.

The penalty amounts in the gravity based penalty matrices in Appendix B have been increased pursuant to the Debt Collection Improvement Act of 1996, which requires federal agencies to periodically adjust the statutory maximum penalties to account for inflation. EPA has thus increased the maximum penalty amounts for TSCA violations to \$37,500.²³ Additional penalty inflation increases occur periodically and are incorporated by reference into this ERPP.

- b. The second stage involves adjusting the gravity-based penalty upward or downward. Adjustments to the penalty amount are made by considering several factors including the following:
 - i. The violator's ability to pay/ability to continue in business;
 - ii. The violator's history of prior violations;
 - iii. The violator's degree of culpability; and
 - iv. Such other matters as justice may require.

These adjustments are discussed in more detail in Item V of this Section.²⁴

²² See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

²³ See, *Civil Monetary Inflation Adjustment Rule*, 73 Fed. Reg. 75340, December 11, 2008.

²⁴ See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

Section 3: Assessing Civil Administrative Penalties

II. Independently Assessable Violations

A separate civil penalty, up to the statutory maximum, can be assessed for each independent violation of TSCA. A violation is considered independent if it results from an act (or failure to act) which is not the result of any other violation for which a civil penalty is being assessed or if at least one of the elements of proof is different from any other violation.

Each requirement of the PRE, RRP, and LBP Activities Rules is a separate and distinct requirement and a failure to comply with any requirement is a violation of the PRE, RRP, or LBP Activities Rules. To determine whether a violation of the PRE, RRP, or LBP Activities Rules has occurred, the applicable requirements must be reviewed to determine which regulatory provisions have been violated.

Examples of the training provider requirements:

- Employ a training manager who has the requisite experience, education, and/or training.
- Meet the minimum training curriculum requirements for each of the disciplines.

Examples of the pre-renovation education requirements:

- Deliver pamphlet to the owner and adult occupant before renovation begins (but not more than 60 days before work begins) **or** mail pamphlet to owner at least 7 days before renovation begins.
- Obtain from the owner and adult occupant, written acknowledgement that they received the pamphlet or obtain a certificate of mailing at least 7 days before the renovation begins.

Examples of a renovation/abatement project:

- Retain all records for 3 years following completion of a project to demonstrate compliance with the PRE, RRP, or LBP Activities Rules.
- Follow work practice standards in each unit of a multi-family housing building.

After identifying each applicable regulatory requirement, the next step is to determine the number of renovations that took place or the number of affected persons to which information was required to be distributed or training provided. The total number of violations depends in part on the number of renovations or on the number of affected entities to which information was required to be distributed. For example:

Section 3: Assessing Civil Administrative Penalties

1. A renovator contracts with a homeowner for renovation activities within the homeowner's one owner-occupied unit. Even if several renovation activities were conducted at that location, the activity is considered one renovation for purposes of determining whether violations of the PRE Rule occurred, since only one person needs to be notified – the homeowner.
2. A renovator contracted with an owner of a multi-unit apartment building for 20 units to undergo renovation. This resulted in 20 separate requirements to comply with the PRE Rule for purposes of determining the number of violations because each unit had a separate adult occupant that the renovator needed to contact.
3. In another example, if there are three unrelated children under the age of 6 at a child-occupied facility undergoing renovation and the renovator fails to notify the parents/guardians of all 3 children, the total number of violations for failure to provide the pamphlet is 3.

Similar calculations can be performed for applicable requirements for other parts of the PRE, RRP, and LBP Activities Rules to determine which regulatory provisions have been violated. A detailed list of some, but not all, potential violations of the PRE, RRP, and LBP Activities Rules is provided in Appendix A.

III. Economic Benefit of Noncompliance

An individual renovator, renovation or abatement contractor, training firm, or any other entity that has violated the PRE, RRP, or LBP Activities Rule(s) and Section 409 of TSCA should not profit from their actions.

The Agency's Policy on Civil Penalties (EPA General Enforcement Policy #GM-21), dated February 16, 1984, mandates the recapture of any significant economic benefit (EBN) that accrues to a violator from noncompliance with the law. Economic benefit can result from a violator delaying or avoiding compliance costs or when a violator otherwise realizes illegal profits through its noncompliance. A fundamental premise of the 1984 Policy is that economic incentives for noncompliance are to be eliminated. If, after the penalty is paid, violators still profit by violating the law, there is little incentive to comply. Therefore, enforcement professionals should always evaluate the economic benefit of noncompliance in calculating penalties. Note that economic benefit can not exceed the statutory maximum penalty amount.

An economic benefit component should be calculated and added to the gravity-based penalty component when a violation results in "significant" economic benefit to the violator. "Significant" is defined as an economic benefit that totals more than \$50 per room renovated per

Section 3: Assessing Civil Administrative Penalties

renovation project²⁵ for all applicable violations alleged in the complaint. In the interest of simplifying and expediting an enforcement action, enforcement professionals may use the “rules of thumb” (discussed in Section 3. IV. b., below) to determine if the economic benefit will be significant.

EPA generally will not settle cases for an amount less than the economic benefit of noncompliance. However, the Agency’s 1984 Policy on Civil Penalties explicitly sets out three general areas where settling for less than the economic benefit may be appropriate. Since issuance of the 1984 Policy, the Agency has added a fourth exception for cases where ability to pay is a factor. The four exceptions are:

- The economic benefit component is an insignificant amount (defined for purposes of this policy as less than \$50 per room renovated per renovation project);
- There are compelling public concerns that would not be served by taking a case to trial;
- It is unlikely, based on the facts of the particular case as a whole, that EPA will be able to recover the economic benefit in litigation; and
- The company has documented an inability to pay the total proposed penalty.²⁶

a. Economic Benefit from Delayed Costs and Avoided Costs

Delayed costs are expenditures that have been deferred by the violator’s failure to comply with the requirements. The violator eventually will spend the money to achieve compliance. Delayed costs are either capital costs (i.e., equipment), if any, or one-time non-depreciable costs (e.g., certification fees for renovation firms, tuition fees for courses for certification).

Avoided costs are expenditures that will never be incurred, as in the case of a failure to implement renovation or abatement work practices. In this example, avoided costs include all the costs associated with procuring supplies and implementing engineering controls for dust or using banned practices for LBP removal. Those costs were never and will never be incurred.

b. Calculation of Economic Benefit from Delayed and Avoided Costs

Since 1984, it has been Agency policy to use either the BEN computer model or “rules of thumb” to calculate the economic benefit of noncompliance. The “rules of thumb” are straight-

²⁵ Alternatively, cost information can be derived from the *Economic Analysis for the TSCA Lead Renovation, Repair and Painting Program Final Rule for Target Housing and Child-Occupied Facilities*; Economic and Policy Analysis Branch, Exposure and Technology Division, Office of Pollution Prevention and Toxics. March, 2008.

²⁶ See, Section 3, Item V; Modification of Penalty, for a discussion of ability to pay/continue in business.

Section 3: Assessing Civil Administrative Penalties

forward methods to calculate economic savings from delayed and avoided compliance expenditures. They are discussed more fully in the Agency's General Enforcement Policy #GM-22, entitled "A Framework for Statute-Specific Approaches to Penalty Assessments," issued on February 16, 1984, at pages 7-9. The "rule of thumb" methodology is available in a Lotus spreadsheet available to EPA enforcement professionals from the Special Litigation and Projects Division of the Office of Civil Enforcement. Enforcement professionals may use the "rules of thumb" whenever the economic benefit penalty is not substantial (generally under \$50 per room renovated per renovation project) and use of an expert financial witness may not be warranted. If the "rules of thumb" yield an amount over \$50 per room renovated per renovation project, the case developer should use the BEN model and/or an expert financial witness to calculate the higher economic benefit penalty. Using the "rules of thumb," the economic benefit of delayed compliance may be estimated at: 5% per year of the delayed one-time capital costs, if any, and/or one-time non-depreciable costs for the period from the date the violation began until compliance was or is expected to be achieved. For avoided annual costs, the "rule of thumb" is the annual expenses avoided until the date compliance is achieved less any tax savings. These rules of thumb do not apply to avoided one-time or avoided capital costs. Enforcement professionals should calculate the economic benefit of avoided one-time and avoided capital costs, if any, by using the BEN model.

The primary purpose of the BEN model is to calculate economic savings for settlement purposes. The model can perform a calculation of economic benefit from delayed or avoided costs based on data inputs, including optional data items and standard values already contained in the program. Enforcement professionals wishing to use the BEN model should take the Basic BEN training course offered by the Special Litigation and Projects Division in cooperation with NETI. Enforcement professionals who have questions while running the model can access the model's help system which contains information on how to: use BEN, understand the data needed, and understand the model's outputs.

The economic benefit component should be calculated for the entire period for which there is evidence of noncompliance, i.e., all time periods for which there is evidence to support the conclusions that the respondent was violating TSCA and thereby gained an economic benefit. Such evidence should be considered in the assessment of the penalty proposed for the violations alleged or proven, up to the statutory maximum for those violations. In certain cases, credible evidence may demonstrate that a respondent received an economic benefit for noncompliance for a period longer than the period of the violations for which a penalty is sought. In such cases, it may be appropriate to consider all of the economic benefit evidence in determining the appropriate penalty for the violations for which the respondent is liable. For example, the economic benefit component of a penalty for failure to comply with work practice standards at a large, multi-year renovation project during which EPA conducted compliance monitoring for only one year should be based on a consideration of the economic benefit gained for the entire period of the renovation, but the total penalty is limited to the statutory maximum for the specific violations alleged and proven.

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In most cases, the violator will have the funds gained through non-compliance available for its continued use or competitive advantage until it pays the penalty. Therefore, for cases in which economic benefit is calculated by using BEN or by a financial expert, the economic benefit should be calculated through the anticipated date a consent agreement would be entered. If the matter goes to hearing, this calculation should be based on a penalty payment date corresponding with the relevant hearing date. It should be noted that the respondent will continue to accrue additional economic benefits after the hearing date, until the assessed penalty is paid. However, there are exceptions for determining the period of economic benefit when using a “rule of thumb.” In those instances, the economic benefit is calculated in the manner described in the first paragraph of this subsection.

IV. Gravity-Based Penalty

Lead poisoning in children, including poisoning in-utero, causes intelligence quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity and behavior problems. In severe cases it may lead to seizures, coma, and death. In as many as 38 million homes in the United States, children’s health is endangered by lead-based paint and/or lead-based paint hazards. Lead in housing and child-occupied facilities remains the most important source of lead exposure for young children and pregnant women. Providing information about the dangers from lead exposures and controlling exposures to lead is the focus of the PRE, RRP, and LBP Activates Rules. The nature and circumstance of a violation of these rules and the extent to which the violation poses a potential for harm are incorporated into the matrices that specify the appropriate gravity-based penalty for that specific or similar violations.

Nature

The TSCA Civil Penalty Guidelines define the nature of a violation as the essential character of the violation, and incorporates the concept of whether the violation is of a “chemical control,” “control-associated data gathering,” or “hazard assessment” nature. With respect to both the RRP and LBP Activities Rules, the requirements are best characterized as “chemical control” in nature because they are aimed at limiting exposure and risk presented by lead-based paint by controlling how lead-based paint is handled by renovators and abatement contractors. In contrast, the requirements of the PRE Rule are best characterized as “hazard assessment” in nature. The PRE Rule requirements are designed to provide owners and occupants of target housing, owners and proprietors of child-occupied facilities, and parents and/or guardians of children under the age of 6 in child-occupied facilities, with information that will allow them to weigh and assess the risks presented by renovations and to take proper precautions to avoid the hazards. This information is vital to occupants of target housing and child-occupied facilities undergoing renovations or abatements to enable them to take proper precautions to avoid unnecessary exposure, especially to children under the age of 6 and pregnant women, that may be created during a renovation or abatement activity. The “nature” of the violation will have a

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direct effect on the measure used to determine the appropriate “circumstance” and “extent” categories are selected on the GBP Matrix in Appendix B.

Circumstance

The term “circumstance” represents the probability of harm resulting from a particular type of violation. The PRE, RRP, and LBP Activities Rules constitute a comprehensive lead-based paint regulatory program. The PRE Rule requirements provide a warning of dangers from lead associated with pending renovations or abatements. The RRP Rule and LBP Activities Rule requirements provide for engineering controls to limit exposures to lead during renovation and abatements and the cleanup procedures to reduce exposures to lead following renovations and abatements. Post-cleanup sampling provides for verification of the effectiveness of the engineering controls and cleanup procedures by testing for residual exposures, if any, to lead.

Therefore, the greater the deviation from the regulations, the greater the likelihood that people will be uninformed about the hazards associated with lead-based paint and any renovations, that exposures will be inadequately controlled during renovations, or that residual hazards and exposures will persist after the renovation/abatement work is completed.

Under the TSCA Penalty Guidelines, “Circumstances” are categorized as *High*, *Medium*, and *Low* and each category has two levels, for a total of six Circumstance levels. Consequently, the ERPP ranks potential violations using 6 levels that factor in compliance with the requirements of the PRE, RRP, or LBP Activities Rules. These requirements are associated with lack of knowledge of lead-based paint and lead-based paint hazards, increased exposure to lead or lead hazards, and verification of lead or lead hazard reduction after the actual renovation/abatement work is completed. For example:

1. For a PRE Rule violation, the harm is associated with the failure to provide information on LBP hazards prior to renovations (a “hazard assessment” activity by its nature under this policy). Therefore, the primary circumstance to be considered is the occupant’s ability to assess and weigh, via the PRE Rule notification process, the factors associated with the risk to their health from the planned renovation, so they can take proper precautions to avoid any lead hazards.
2. For a RRP Rule violation of the technical workplace standards, the harm is associated with the failure to control exposures to lead during a renovation (i.e., a “chemical control” activity by its nature under this policy). Therefore, the primary Circumstance to be considered is whether the specific violation has a high, medium, or low probability of impacting human health.

For purposes of this policy, specific violations of the PRE, RRP, and LBP Activities Rules have been categorized as follows:

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Levels 1 and 2:	Violations having a high probability of impacting human health and the environment.
Levels 3 and 4:	Violations having a medium probability of impacting human health and the environment.
Levels 5 and 6:	Violations having a low probability of impacting human health and the environment.

Extent

The term “extent” represents the degree, range, or scope of a violation’s potential for harm. The TSCA Penalty Guidelines provide three “extent” categories: *Major*, *Significant*, and *Minor*. In the context of the PRE, RRP, and LBP Activities Rules, the measure of the “extent” of harm focuses on the overall intent of the rules and the amount of harm the rules are designed to prevent (e.g., serious health effects from childhood lead poisoning). For example, the potential for harm due to the failure of the renovator to provide the *Renovate Right* pamphlet could be considered “Major” if risk factors are high for exposure. In the example of an RRP violation of the technical workplace standards, the harm is associated with the failure to control exposures to lead during a renovation. Therefore, the primary consideration for determining the extent of harm to be considered is whether the specific violation could have a serious or significant or minor impact on human health, with the greatest concern being for the health of a child under 6 years of age and a pregnant woman in target housing. Even in the absence of harm in the form of direct exposures to lead hazards, the gravity component of the penalty should reflect the seriousness of the violation in terms of its effect on the regulatory program. For example, course completion certificates are used by inspectors to identify individuals at worksites who must perform key renovation activities under the RRP Rule. This allows inspectors to efficiently identify those individuals excluded from regulated renovation activities that require certified renovators and to document that each renovation firm employs and uses a certified renovator. TSCA Civil Penalty Guidelines provide the following definitions for the 3 Extent categories:

- | | |
|--------------|---|
| Major: | Potential for serious damage to human health or the environment. |
| Significant: | Potential for significant damage to human health or the environment. |
| Minor: | Potential for lesser amount of damage to human health or the environment. |

Under these categories, the appropriate extent category for failure or refusal to comply with the provisions of the Rules is based upon 3 determinable facts:

- The age of any children who occupy target housing;

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- Whether a pregnant woman occupies target housing; and
- Whether a child or children under six had access to the child-occupied facility during renovations/abatement.

Age of child(ren) occupying target housing: Age will be determined by the age of the youngest child residing in the target housing at the time the violation occurred or at the time the renovation occurred. However, any individual can be adversely affected by exposure to lead. Children under the age of 6 are most likely to be adversely affected by the presence of lead-based paint and/or lead-based paint hazards based on habits (particularly hand-to-mouth activity) and vulnerability due to their physical development.

If EPA knows or has reason to believe that a child under the age of 6 is present, then for purposes of proposing a gravity-based penalty, the Major extent category should be used. Where the age of the youngest individual is not known, or a respondent is able to demonstrate to EPA's satisfaction that the youngest individual residing in the target housing at the time of the violation was at least 6 years of age and less than eighteen, then a Significant extent factor should be used. Where a respondent is able to demonstrate to EPA's satisfaction that no individuals younger than eighteen were residing in the target housing at the time of the violation, then a Minor extent factor should be used.

Pregnant women living in target housing: Lead exposure before or during pregnancy can alter fetal development and cause miscarriages. If EPA determines that a pregnant woman occupied the target housing at the time a violation occurred, then a Major extent should be used.

Child-occupied facilities: Child-occupied facilities are, by definition, regularly visited by the same child(ren) under the age of 6. EPA will generally consider failures by renovation/abatement firms to notify parents or guardians of children under 6 as Major in extent. Where a respondent demonstrates to EPA's satisfaction that no children under 6 visited the facility during the renovation (*i.e.*, from the beginning of the renovation through the final cleaning verification), such as during an elementary school's summer break, then an extent factor other than Major should be used.

V. Modification of the Penalty

In addition to the factors discussed in Subsection IV Gravity-Based Penalty above, EPA shall also consider regarding the violations which are the subject of the specific action, with respect to the violator:

- The degree of culpability;
- Any history of prior such violations;

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- The ability to pay/ability to continue to do business; and
- Such other matters as justice may require.²⁷

All appropriate upward adjustments of the gravity-based penalty amount should be made prior to the issuance of the proposed penalty, while downward adjustments²⁸ generally should not be made until after the proposed penalty has been issued, at which time these factors may be considered either during settlement negotiations or litigation.

Degree of Culpability

This factor may be used to increase or decrease the gravity-based penalty. TSCA is a strict liability statute for civil actions, so that culpability is irrelevant to the determination of legal liability. However, this does not render the violator's culpability irrelevant in assessing an appropriate penalty. Knowing or willful violations generally reflect an increased culpability on the part of the violator and may even give rise to criminal liability. The culpability of the violator should be reflected in the amount of the penalty, which may be adjusted upward or downward by up to 25% for this factor. In assessing the degree of culpability, all of the following points should be considered:

- Amount of control the violator had over the events constituting the violation;
- Level of sophistication (knowledge of the regulations) of the violator in dealing with compliance issues; and
- Extent to which the violator knew, or should have known, of the legal requirement that was violated. (For example, was the violator previously informed of the federal requirement to provide the “*Renovate Right*” pamphlet in a prior notice of a local code violation from a local building permit or code office?)

History of Prior Violations

A prior history of violations of the PRE, RRP, or LBP Activities Rules should be reflected in the amount of the penalty. The gravity-based penalty matrices are designed to apply to “first offenders.” Where a violator has demonstrated a similar history of “such violations” the Act requires the penalty to be adjusted upward by as much as 25% under the *Guidelines for Assessment of Civil Penalties under Section 16 of TSCA*. The need for such an upward adjustment is usually justified because the violator has not been sufficiently motivated to comply

²⁷ See, 15 U.S.C. § 2615(a)(2)(B). Under unusual circumstances there may be other factors not specified herein that must be considered to reach a just resolution.

²⁸ See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

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with the PRE, RRP, or LBP Activities Rules by the penalty assessed for the previous violation(s).

For the purpose of this policy, EPA interprets “prior such violations” to mean any prior violation(s) of the PRE, RRP, or LBP Activities Rules. For example, the following guidelines apply in evaluating the history of such violations to the PRE Rule:

To constitute a prior violation:

1. The prior violation must have resulted in a consent agreement and final order or consent order (CAFO), consent decree, default judgment (judicial decision), or criminal conviction; and
 2. The resulting order/judgment/conviction was entered or executed within five calendar years prior to the date the subsequent violation occurred. Receipt of payment made to the U.S. Treasury can be used as evidence constituting a prior violation, regardless of whether a respondent admits to the violation and/or enters into a CAFO. Issuance of a NON does not constitute a prior violation for purposes of this policy since no violation is formally found and no opportunity to contest the notice is provided. In order to constitute a prior violation, a prior violation must have resulted in a final order. Violations litigated in Federal courts under the Act’s imminent hazard (§ 7), specific enforcement and seizure (§ 17), and criminal (§ 16(b)) provisions, are also part of a violators history for penalty assessment purposes.
- Two or more corporations or business entities owned by, or affiliated with, the same parent corporation or business entity may not necessarily affect each other’s history (such as with independently-owned franchises) if they are substantially independent of one another in their management and in the functioning of their Boards of Directors. EPA reserves the right to request, obtain, and review all underlying and supporting financial documents that elucidate relationships between entities to verify their accuracy. If the violator fails to provide the necessary information, and the information is not readily available through other sources, then EPA is entitled to rely on the information it does have in its control or possession.
 - In the case of wholly-owned subsidiaries, the parent corporation’s history of violation will apply to all of its subsidiaries. Similarly, the history of violation for a wholly-owned subsidiary will apply to the parent corporation.

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Ability to Pay/Continue in Business

Section 16(a)(2)(B) of TSCA requires that the violator's ability to pay the proposed civil penalty be considered as a statutory factor in determining the amount of the penalty. Absent proof to the contrary, EPA can establish a respondent's ability to pay with circumstantial evidence relating to a company's size and annual revenue. Once this is done, the burden is on the respondent to demonstrate an inability to pay all or a portion of the calculated civil penalty.²⁹

To determine the appropriateness of the proposed penalty in relation to a person's ability to pay, the case team should review publicly-available information, such as Dun and Bradstreet reports, a company's filings with the Securities and Exchange Commission (when appropriate), or other available financial reports before issuing the complaint. In determining the amount of a penalty for a violator when financial information is not publicly-available, relevant facts obtained concerning the number of renovation contracts signed by a violator and the total revenues generated from such renovation contracts may offer insight regarding the violator's ability to pay the penalty.

The Agency will notify the respondent of its right under the statute to have EPA consider its ability to continue in business in determining the amount of the penalty. Any respondent may raise the issue of ability to pay/ability to continue in business in its answer to the complaint or during the course of settlement negotiations. If a respondent raises "inability to pay" as a defense in its answer or in the course of settlement negotiations, the Agency should ask the respondent to present appropriate documentation, such as tax returns and financial statements. The respondent should provide records that conform to generally accepted accounting principles and procedures at its expense. EPA generally should request the following types of information:

- The last three to five years of tax returns;
- Balance sheets;
- Income statements;
- Statements of changes in financial position;

²⁹ Note that under the Environmental Appeals Board ruling in *In re: New Waterbury, LTD*, 5 E.A.D. 529 (EAB 1994), in administrative enforcement actions for violations under statutes that specify ability to pay (which is analogous to ability to continue in business) as a factor to be considered in determining the penalty amount, EPA must prove it adequately considered the appropriateness of the penalty in light of all of the statutory factors. Accordingly, enforcement professionals should be prepared to demonstrate that they considered the respondent's ability to continue in business as well as the other statutory penalty factors and that their recommended penalty is supported by their analysis of those factors. EPA may obtain information regarding a respondent's ability to continue in business from the respondent, independent commercial financial reports, or other credible sources.

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- Statement of operations;
- Information on business and corporate structure;
- Retained earnings statements;
- Loan applications, financing agreements, security agreements;
- Annual and quarterly reports to shareholders and the SEC, including 10K reports; and
- Statements of assets and liabilities.

There are several sources available to assist enforcement professionals in determining a respondent's ability to pay. Enforcement professionals considering a respondent's ability to continue in business should consult "A Framework for Statute-Specific Approaches to Penalty Assessments" (cited above) and EPA General Enforcement Policy PT.2-1 (previously codified as GM-#56), entitled "Guidance on Determining a Violator's Ability to Pay a Civil Penalty" (December 16, 1986). In addition, the Agency has three computer models available to help assess whether violators can afford compliance costs and/or civil penalties: ABEL, INDIPAY and MUNIPAY. INDIPAY analyzes individual taxpayers' claims about inability to pay. MUNIPAY analyzes ability to pay for cities, towns, and villages. These models are designed for settlement purposes only.

ABEL is an EPA computer model that is designed to assess inability to pay claims from corporations and partnerships. The evaluation is based on the firm's excess cash flow. ABEL looks at the money coming into the entity and the money going out. It then looks at whether the excess cash flow is sufficient to cover the firm's environmental responsibilities (i.e., compliance costs) and the proposed civil penalty. Because the program only focuses on a violator's cash flow, there are other sources of revenue that should also be considered to determine if a firm or individual is unable to pay the full penalty. These include:

- Certificates of deposit, money market funds, or other liquid assets;
- Reduction in business expenses such as advertising, entertainment, or compensation of corporate officers;
- Sale or mortgage of non-liquid assets such as company cars, aircraft, or land; and
- Related entities (e.g., the violator is a wholly owned subsidiary of Fortune 500 company).

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A respondent may argue that it cannot afford to pay the proposed penalty even though the penalty as adjusted does not exceed EPA's assessment of its ability to pay. In such cases, EPA may consider a delayed payment schedule calculated in accordance with Agency installment payment guidance and regulations.³⁰ In exceptional circumstances, EPA may also consider further adjustment below the calculated ability to pay.

Finally, EPA will generally not collect a civil penalty that exceeds a violator's ability to pay as evidenced by a detailed tax, accounting, and financial analysis.³¹ However, it is important that the regulated community not choose noncompliance as a way of aiding financially troubled businesses. Therefore, EPA reserves the option, in appropriate circumstances, of seeking a penalty that might exceed the respondent's ability to pay, cause bankruptcy, or result in a respondent's inability to continue in business. Such circumstances may exist where the violations are egregious³² or the violator refuses to pay the penalty. However, if the case is generated out of an EPA regional office, the case file must contain a written explanation, signed by the regional authority duly delegated to issue and settle administrative penalty orders under TSCA, which explains the reasons for exceeding the "ability to pay" guidelines. To ensure full and consistent consideration of penalties that may cause bankruptcy or closure of a business, the regions should consult with the Waste and Chemical Enforcement Division (WCED).³³

Size of Violator: EPA estimated³⁴ that about 394,000 firms supply renovation services nationwide including 82,800 small residential remodeling firms that employ less than 4 people. An additional 1.2 million people are self-employed contractors covered under the RRP Rule, including 194,000 residential remodelers. The general presumption is that small, independent renovation firms lack the level of knowledge and awareness of the LBP rules shared by larger renovators with more employees and more extensive involvement in the renovation industry. Therefore, this factor should be considered when considering economic benefit from noncompliance, ability to pay/continue in business³⁵ for very small firms and the self-employed.

³⁰ See, 40 C.F.R. § 13.18.

³¹ See, TSCA Penalty Guidelines, 45 Fed. Reg. 59775, September 1, 1980. Each financial analysis of a respondent's ability to pay should assume an ability to pay at least a small penalty to acknowledge and reinforce the respondent's obligations to comply with the regulatory requirements cited as violations in the civil administrative complaint.

³² An example of an egregious situation would be where a firm or individual renovator failed to follow any work practice standard, including containment, cleanup, or post-cleanup verification, or used prohibited or restricted practices which resulted in a paint, dust, or soil lead hazard in target housing where a pregnant woman or child under 6 resided or in a child occupied facility.

³³ See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

³⁴ See, Footnote 25, pages 2-16 through 2-20.

³⁵ See, Footnote 31, concerning reinforcing a respondent's obligation to comply.

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Other Factors as Justice May Require

This provision allows an adjustment to the gravity-based component of a penalty for other factors which may arise on a case-by-case basis. The factors discussed in this section may or may not be known at the time a pre-filing letter is sent or a complaint is issued. To the extent that these and other relevant factors become known, adjustments to gravity-based penalties calculated using the factors in Section 3. IV. above, may be made prior to issuing a complaint or at any time thereafter.

Voluntary Disclosure of Violations prior to an Inspection, Investigation, or Tip/Complaint

Violations must be disclosed to EPA before the Agency receives any information about the violations or initiates an inspection or investigation of the firm or individual. No penalty reductions should be given under the Audit Policy, Small Business Policy, or for other voluntary disclosures where the penalties are based on inspections or other investigations.

Audit Policy: A renovator who conducts an audit and voluntarily self-discloses any violations of the PRE, RRP, or LBP Activities Rules under the “Incentives for Self-Policing: Disclosure, Correction and Prevention of Violations” (65 FR 19618, April 11, 2000 (Audit Policy)), may be eligible for a reduction of the gravity-based penalty if all the criteria established in the audit policy are met.³⁶ Reference must be made to that document to determine whether a regulated entity qualifies for this penalty mitigation.

Small Business Policy: A business with fewer than 100 employees may be eligible for a reduction of a gravity-based penalty under the EPA’s Policy on Compliance Incentives for Small Business (Small Business Policy, June 10, 1996).³⁷ Reference must be made to that document to determine whether a regulated entity qualifies for this penalty mitigation.

Voluntary Disclosures: If a firm or individual self-discloses a violation of the PRE, RRP, or LBP Activities Rules but does not qualify for consideration under either the Audit Policy or the Small Business Policy, the proposed civil penalty amount may still be reduced for such voluntary disclosure. To encourage voluntary disclosures of violations, EPA may make a reduction of up to 10% of the gravity-based penalty. An additional reduction up to 10% (for a total reduction of up to 20%) may be given to those violators who report the potential violation to EPA within 30 days of self-discovery of the violation(s).

³⁶ See, Appendix C, Audit Policy

³⁷ See, Appendix C, Small Business Policy.

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Attitude

In cases where a settlement is negotiated prior to a hearing, after other factors have been applied as appropriate, EPA may reduce the resulting adjusted proposed gravity-based penalty up to a total of 30%, but not more than the calculated economic benefit from non-compliance for attitude,³⁸ if the circumstances warrant. In addition to creating an incentive for cooperative behavior during the compliance evaluation and enforcement process, this adjustment factor further reinforces the concept that respondents face a significant risk of higher penalties in litigation than in settlement. The attitude adjustment has 3 components: cooperation, immediate steps taken to comply with the LBP rules, and early settlement:

- EPA may reduce the adjusted proposed penalty up to 10% based on a respondent's cooperation throughout the entire compliance monitoring, case development, and settlement process.
- EPA may reduce the adjusted proposed penalty up to 10% for a respondent's immediate good faith efforts to comply with the violated regulation and the speed and completeness with which it comes into compliance.
- EPA may reduce the adjusted proposed penalty up to 10% if the case is settled before the filing of pre-hearing exchange documents.

Special Circumstances/Extraordinary Adjustments

A case may present other factors that the case team believes justify a further reduction of the penalty.³⁹ For example, a case may have particular litigation strengths or weaknesses that have not been adequately captured in other areas of this ERPP. If the facts of the case or the nature of the violation(s) at issue reduce the strength of the Agency's case, then an additional penalty reduction may be appropriate. In such circumstances, the case team should contact OECA to discuss.⁴⁰ If after careful consideration, the case team determines that an additional reduction of the penalty is warranted, it should ensure the case file includes substantive reasons why the extraordinary reduction of the civil penalty is appropriate, including: (1) why the penalty derived from the TSCA civil penalty matrices and gravity adjustment is inequitable; (2) how all other methods for adjusting or revising the proposed penalty would not adequately resolve the inequity; (3) the manner in which the adjustment of the penalty effectuated the purposes of the Act; and (4) documentation of management concurrence in the extraordinary reduction. EPA should still obtain a penalty sufficient to remove any economic incentive for violating applicable TSCA requirements.

³⁸ See, TSCA Civil Penalty Guidance, attitude of the violator. 45 Fed. Reg. 59773; September 10, 1980

³⁹ See, Appendix C, TSCA Enforcement Policy and Guidance Documents, Memorandum, *Documenting Penalty Calculations and Justifications of EPA Enforcement Actions*, James Strock, August 9, 1990.

⁴⁰ See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

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VI. Adjusting Proposed Penalties in Settlement

Certain circumstances may justify adjustment of the proposed penalty. These circumstances may come to EPA's attention when a respondent files an answer to a civil complaint or during pre-filing settlement discussions under the *Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties*, 40 C.F.R. Part 22.

1) Factual Changes

EPA will recalculate the proposed penalty if the respondent can demonstrate that facts material to the initial calculation are different. For example:

- The owner of a property undergoing renovation/abatement provides appropriate documentation⁴¹ that the portion of the property undergoing renovation/abatement is lead-based paint free;
- A renovator or renovation firm provides appropriate documentation that it was renovating/abating a portion of property previously demonstrated to them to be LBP free; or
- A renovator or renovation firm provides appropriate documentation that it had renovated/abated a portion of property subsequently demonstrated to them to be LBP free.

In every case, the burden is on the respondent to raise those new factors which may justify the recalculation, consistent with the new facts.

2) Remittance of Penalty

The statute authorizes the Administrator to compromise, modify or remit, with or without condition, any civil penalty which may be imposed under this section.⁴² EPA has issued a policy on implementing this subsection.⁴³ An example of the application of this policy would be the remittance of a portion of the unadjusted gravity-based penalty developed for violations of the RRP Rule in consideration of acceptance of a suspension or revocation of the violator's LBP certification or training authorization. The violator would still be liable for a penalty for any economic benefit accrued as a result of the violation(s). The terms of the remittance and suspension or revocation must be incorporated into a Compliance Agreement and Final Order.⁴⁴

⁴¹ "Appropriate documentation" or "demonstration" such as reports of lead inspections conducted in accordance with HUD's Guidelines for Assessment of Lead-Based Paint and Lead-Based Paint Hazards.

⁴² See, 15 U.S.C. 2615(a)(2)(C), Section 16(a)(2)(C) of TSCA.

⁴³ See, Appendix C, TSCA Enforcement Policy and Guidance Documents; Memorandum, *Settlement with Conditions*, A. E. Conroy II, November 16, 1983.

⁴⁴ This provision may also be used to remit penalties in exchange for the completion of projects similar to those projects implemented under the Supplemental Environmental Projects program.

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The Chief of the Chemical Risk and Reporting Branch must concur before an offer to remit is made under this ERPP.⁴⁵

3) Supplemental Environmental Projects

Supplemental Environmental Projects (SEPs) are environmentally beneficial projects that a respondent agrees to undertake in settlement of an environmental enforcement action, but that the respondent is not otherwise legally required to perform. In return, the cost of the SEP reduces the amount of the final penalty paid by the respondent. SEPs are only available in negotiated settlements.

EPA has broad discretion to settle cases with appropriate penalties. Evidence of a violator's commitment and ability to perform the proposed SEP is a relevant factor for EPA to consider in establishing an appropriate settlement penalty. The SEP Policy,⁴⁶ defines categories of projects that may qualify as SEPs, procedures for calculating the cost of the SEP, and the percentage of that cost which may be applied as a mitigating factor in establishing an appropriate settlement amount. EPA should ensure that the inclusion of any SEP in settlement of an enforcement action is consistent with the SEP Policy in effect at the time of the settlement. Examples of potential SEPs are listed in Appendix D.

⁴⁵ See, Footnote 6. Please consult the current document for any additional or more recent guidance or requirement for consultation or concurrence.

⁴⁶ See, Appendix C for links to SEP Policies.

APPENDICES

Appendix A Violations and Circumstance Levels

CIRCUMSTANCE LEVEL

⁴⁸ Circumstance Level	Rule Violation
Section I Information Distribution Requirements	
Level 1b	<u>1-Renovation in Dwelling Unit</u> : Failure to provide the owner of the unit with the EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. § 745.84(a)(1)
Level 1b	<u>2-Renovation in Dwelling Unit</u> : Failure to provide the adult occupant of the unit (if not the owner) with the EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. § 745.84(a)(2)
Level 1b	<u>3-Renovation in Common Area</u> : Failure to provide the owner of the multi-family housing with the EPA-approved lead hazard information/pamphlet or to post informational signs pursuant to 40 C.F.R. § 745.84(b)(1)
Level 1b	<u>4-Renovation in Common Area</u> : Failure to notify in writing, or ensure written notification of, each unit of the multi-family housing and make the pamphlet available upon request prior to the start of the renovation, or to post informational signs pursuant to 40 C.F.R. §745.84(b)(2)
Level 1b	<u>5-Renovation in Child-Occupied Facility</u> : Failure to provide the owner of the building in which the child-occupied facility is located with the EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. §745.84(c)(1)(i)
Level 1b	<u>6-Renovation in Child-Occupied Facility</u> : Failure to provide an adult representative of the child-occupied facility with the pamphlet, if the owner is not the operator of the child-occupied facility, pursuant to 40 C.F.R. §745.84(c)(1)(ii)
Level 1b	<u>7-Renovation in Child-Occupied Facility</u> : Failure to provide the parents and/or guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date, by mailing or hand-delivering the pamphlet and renovation information, or by posting informational signs describing the general nature and locations of the renovation and the anticipated completion date, posted in areas where they can be seen by parents or guardians of the children frequenting the child-occupied facility, and accompanied by a posted copy of the pamphlet or information on how interested parents or guardians can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians, pursuant to 40 C.F.R. §745.84(c)(2)
Level 1b	<u>8-All Renovations</u> : Failure of firms to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area; to prepare, to the extent practicable, signs in the primary language of the occupants; and/or to post signs before beginning the renovation and make sure they remain in place and readable until the renovation and the post-renovation cleaning verification have been completed, pursuant to 40 C.F.R. §745.85 (1).
Section II Test Kits	
Level 1a	<u>1-All Renovations</u> : Failure to use an EPA approved dust test kit when determining the presence of lead, pursuant to 40 C.F.R. §745.88 where the test kit result provided a false negative result for lead (i.e., no lead)
Level 5a	<u>2-All Renovations</u> : Failure to use an EPA approved dust test kit when determining the presence of lead, pursuant to 40 C.F.R. §745.88 where the test kit provided an accurate result for the presence of lead

⁴⁸ The matrices in Appendix A on pages B-1 through B-9 contain 2 tiers. Circumstance Level “b” is for PRE Rule requirements which are “hazard assessment” in Nature. Circumstance Level “a” is for LBP Activities Rule and RRP Rule requirements which are “chemical control” in Nature, and all combinations of “a” and “b” violations.

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Section III Failure to Allow Access to Records, or Refusal of An Inspection	
Level 2a	<u>1-All Renovations:</u> Failure or refusal to permit entry or inspection, pursuant to 40 C.F.R. §745.87(c), which states that such failure or refusal to permit entry or inspection is also a violation of TSCA §15 and TSCA §409
Level 2a	<u>2-Target Housing and Child-occupied Facilities:</u> Failure or refusal to permit entry or inspection, pursuant to 40 C.F.R. §745.235(c), as required by §745.237 and section 11 of TSCA (15 U.S.C. § 2610) is a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. § 2614, 2689)
Section IV Failure to Establish and Maintain Records, Failure or Refusal to Make Records Available	
Level 3a	<u>1-All Renovations:</u> Failure or refusal to establish and maintain records, or to make available such records, pursuant to 40 C.F.R. §745.87(b), which states that such failure or refusal is a violation of TSCA §409
Level 3a	<u>2-Target Housing and Child-occupied Facilities:</u> Failure or refusal to establish maintain, provide, copy, or permit access to records or reports, pursuant to 40 C.F.R. §745.225, § 745.226, and/or §745.227
Section V Acknowledgment and Certification Statement Requirements	
Level 4b	<u>1-Renovation in Dwelling Unit:</u> Failure to obtain, from the owner, a written acknowledgment that the owner has received the pamphlet, pursuant to 40 C.F.R. § 745.84(a)(1)(i) or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.84(a)(1)
Level 4b	<u>2-Renovation in Dwelling Unit:</u> Failure to obtain, from the adult occupant, a written acknowledgment that the adult occupant has received the pamphlet, pursuant to 40 C.F.R. § 745.84(a)(2)(i) or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.84(a)(2)
Level 4b	<u>3-Renovation in Common Area:</u> Failure to obtain, from the owner, a written acknowledgment that the owner has received the pamphlet, or that information signs have been posted, pursuant to 40 C.F.R. § 745.84(b)(1)(i) or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.84(b)(1)
Level 4b	<u>4-Renovation in Common Area:</u> Failure to prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet, pursuant to 40 C.F.R. §745.84(b)(3)
Level 5b	<u>5-Renovation in Common Area:</u> Failure to notify, in writing, the owners and occupants if the scope, locations or expected starting and ending dates of the planned renovation activities change after the initial notification, before the renovator initiates work beyond that which was described in the original notice, pursuant to 40 C.F.R. § 745.84(b)(4)
Level 4b	<u>6-Renovation in Child-Occupied Facility:</u> Failure to obtain, from the owner of the building, a written acknowledgment that the owner has received the pamphlet, or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. §745.84(c)(1)(i)
Level 4b	<u>7-Renovation in Child-Occupied Facility:</u> Failure to obtain from an adult representative of the child-occupied facility, if the operator of the child-occupied facility is not the owner of the building, a written acknowledgment that the operator has received the pamphlet, or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.84(c)(1)(ii)
Level 4b	<u>8-Renovation in Child-Occupied Facility:</u> Failure to prepare, sign and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet pursuant to 40 C.F.R. §745.84(c)(3)
Level 5b	<u>9-All Renovations:</u> Failure to include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of the renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature, pursuant to 40 C.F.R. § 745.84(d)(1)
Level 5b	<u>10-All Renovations:</u> Failure to provide the written acknowledgment of receipt on either a separate sheet or as part of any written contract or service agreement for the renovation, and be written in the same language as the text of the contract or agreement or lease or pamphlet, pursuant to 40 C.F.R. § 745.84(d)(2) and (3)

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Section VI Record Retention Requirements	
Level 6a	<u>1-All Renovations:</u> Failure to retain all records necessary to demonstrate compliance with the residential property renovation for a period of 3 years following completion of the renovation activities pursuant to 40 C.F.R. § 745.86
Level 6a	<u>2-All Renovations:</u> Failure of a training program to maintain and make available to EPA upon request, records for a period of 3 years and 6 months, pursuant to 40 C.F.R. § 745.225 (i)
Level 6a	<u>3-Target Housing and Child-occupied Facilities:</u> Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required by §§745.225, 745.226, or 745.227, pursuant to 40 C.F.R. § 745.235 (b)
Section VII Renovation Firm, Renovator and Dust Sampling Technician Certifications and Requirements	
Level 3a ⁴⁹	<u>1-All Renovations:</u> Failure of a firm that performs, offers or claims to perform renovations or dust sampling for compensation to obtain initial certification from EPA, under 40 C.F.R. §745.89(a) pursuant to 40 CFR § 745.81(a)(2)(ii)
Level 5a	<u>2-All Renovations:</u> Failure of an EPA-certified firm to stop renovations or dust sampling if it does not obtain recertification under 40 CFR § 745.89(a), pursuant to 40 C.F.R. §745.89(b)(1)(iii)
Level 5a	<u>3-All Renovations:</u> Failure of an EPA-certified firm to amend its certification within 90 days of the date a change occurs to information included in the firm's most recent applications, pursuant to 40 C.F.R. §745.89(b). Failure of a firm to halt renovations or dust sampling until its certification is amended, pursuant to 40 C.F.R. §745.89(c)
Level 3a	<u>4-All Renovations:</u> Failure of a firm to carry out its responsibilities during a renovation, under 40 C.F.R. §745.89(d)(1) pursuant to 40 C.F.R. §745.81(a)(2)
Level 3a	<u>5-All Renovations:</u> Failure of a firm to carry out its responsibilities during a renovation, under 40 C.F.R. §745.89(d)(2) pursuant to 40 C.F.R. §745.81(a)(2)
Level 3a	<u>6-All Renovations:</u> Failure of a renovator or dust sampling technician, performing renovator or dust sampling responsibilities under 40 C.F.R. § 745.90(b) or (c) to obtain a course completion certificate (proof of certification) under 40 CFR § 745.90(a)), pursuant to 40 C.F.R. §745.81(a)(3)
Level 4a	<u>7-All Renovations:</u> Failure of a renovator or dust sampling technician, performing renovator or dust sampling responsibilities under 40 C.F.R. § 745.90(b) or (c) to maintain copies of their course completion certificate(s) (proof of certification) at the work site pursuant to 40 CFR § 745.90(b)(7)
Level 1a	<u>8-All Renovations:</u> Failure of an individual to perform responsibilities for ensuring compliance with 40 C.F.R. §745.85 at all renovations to which they are assigned, pursuant to 40 C.F.R. § 745.90(b) or (c)
Level 1a	<u>9-All Renovations:</u> Failure of a dust sampling technician to perform optional dust clearance sampling under §745.85(c), pursuant to 40 C.F.R. § 745.90(c)
Level 5a	<u>10-Target Housing and Child-occupied Facilities:</u> Failure of an EPA-certified individual to stop directing renovations if he or she does not obtain recertification under 40 CFR § 745.90(a)(4), pursuant to 40 C.F.R. §745.81(a)(3)
Level 5a	<u>11-Target Housing and Child-occupied Facilities:</u> Failure of an EPA-certified individual to stop renovations or dust sampling if he or she does not obtain recertification under 40 CFR § 745.90(a)(4), pursuant to 40 C.F.R. §745.81(a)(4)
Section VIII Training Providers: Accreditation and Operation of Training Programs	
Level 3a	<u>1-Target Housing and Child-occupied Facilities:</u> Failure of a training program that performs, offers or claims to provide EPA-accredited lead-based paint activities courses, or renovator or dust sampling courses to apply for accreditation to EPA under 40 CFR §745.225(b) and receive accreditation from EPA under 40 CFR § 225(b)(2) pursuant to 40 CFR § 745.225(a)(3)

⁴⁹ For a self-employed renovator or very small firm (<4 employees), the “Extent” category is usually “minor” for “offering to perform” renovations. For larger firms, such as those acting as general contractors, the “Extent” category is usually “major” because the potential impact is greater in the number and size of renovations.

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Level 3a	<u>2-Target Housing and Child-occupied Facilities:</u> Failure by a training program to employ a training manager who has the requisite experience, education, and/or training, pursuant to 40 C.F.R. §745.225(c)(1)
Level 3a	<u>3-Target Housing and Child-occupied Facilities:</u> Failure by a training program to designate a qualified principal instructor for each course who has the requisite experience, education, and/or training, pursuant to 40 C.F.R. §745.225(c)(2)
Level 3a	<u>4-Target Housing and Child-occupied Facilities:</u> Failure of a training program's principal instructor and/or training manager to perform the assigned responsibilities, pursuant to 40 C.F.R. §745.225(c)(3)
Level 6a	<u>5-Target Housing and Child-occupied Facilities:</u> Failure of a training program to submit or retain the EPA-recognized documents as evidence that the training managers and principal instructors have the education, work experience, training requirements, or demonstrated experience, pursuant to 40 C.F.R. §745.225(c)(4)
Level 5a	<u>6-Target Housing and Child-occupied Facilities:</u> Failure of a training program to ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities, including the provision of training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed, pursuant to 40 C.F.R. §745.225(c)(5)
Level 3a	<u>7-Target Housing and Child-occupied Facilities:</u> Failure of a training program to provide the training courses that meet the training hour requirements to ensure accreditation in the relevant disciplines, pursuant to 40 C.F.R. §745.225(c)(6)
Level 4a	<u>8-Target Housing and Child-occupied Facilities:</u> Failure of a training program to conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline to evaluate successful completion of the course, pursuant to 40 C.F.R. §745.225(c)(7)
Level 6a	<u>9-Target Housing and Child-occupied Facilities:</u> Failure of a training program to issue unique course completion certificates containing the required information to each individual who passes the training course, pursuant to 40 C.F.R. §745.225(c)(8)
Level 5a	<u>10-Target Housing and Child-occupied Facilities:</u> Failure of a training program to develop and implement a quality control plan that contains at least the minimum elements, pursuant to 40 C.F.R. §745.225(c)(9)
Level 3a	<u>Target Housing and Child-occupied Facilities:</u> Failure of a training program to ensure that courses offered by the training program teach the work practice standards contained in §745.85 or §745.227, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-based paint activities they will be responsible for conducting, pursuant to 40 C.F.R. §745.225(c)(10)
Level 3a	<u>11-Target Housing and Child-occupied Facilities:</u> Failure of a training manager to allow EPA to audit the training program to verify the contents of the application for accreditation as described in paragraph (b) of 40 C.F.R. §745.225, pursuant to 40 C.F.R. §745.225(c)(12)
Level 6a	<u>12-Target Housing and Child-occupied Facilities:</u> Failure of a training manager to provide notification of renovator, dust sampling technician, or renovator, dust sampling technician, or lead-based paint activities offered, pursuant to 40 C.F.R. §745.22(c)(13)
Level 6a	<u>13-Target Housing and Child-occupied Facilities:</u> Failure by training manager to provide EPA with notification of all lead-based paint activities courses offered at least 7 business days prior to the start date of any lead-based paint activities course, pursuant to 40 C.F.R. §745.225(c)(13)(i)
Level 5a	<u>14-Target Housing and Child-occupied Facilities:</u> Failure of a training manager to provide notification following completion of renovator, dust sampling technician, or lead-based paint activities courses, pursuant to 40 C.F.R. §745.225(c)(14)
Level 3a	<u>15-Target Housing and Child-occupied Facilities:</u> Failure by a training program to meet the minimum training curriculum requirements for each of the disciplines, pursuant to 40 C.F.R. §745.225(d)

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⁴⁸ Circumstance Level	Rule Violation
Section IX Work Practice Standards for Conducting Renovations in Target Housing and Child-Occupied Facilities	
Level 2a	<u>1-Interior Renovations:</u> Failure by the renovation firm to remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed, pursuant to 40 C.F.R. §745.85(a)(2)(i)(A)
Level 2a	<u>2-Interior Renovations:</u> Failure by the renovation firm, before beginning the renovation, to close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material, pursuant to 40 C.F.R. §745.85(a)(2)(i)(B)
Level 2a	<u>3-Interior Renovations:</u> Failure by the renovation firm to close windows and doors in the work area, cover doors with plastic sheeting or other impermeable material, and/or cover doors used as an entrance to the work 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, pursuant to 40 C.F.R. §745.85(a)(2)(i)(C)
Level 2a	<u>4-Interior Renovations:</u> Failure by the renovation firm, before beginning the renovation, to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater, pursuant to 40 C.F.R. §745.85(a)(2)(i)(D)
Level 2a	<u>5-Interior Renovations:</u> Failure by the renovation firm to use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area, pursuant to 40 C.F.R. §745.85(a)(2)(i)(E)
Level 2a	<u>6-Exterior Renovations:</u> Failure by the renovation firm, before beginning the renovation, to close all doors and windows within 20 feet of the renovation, close all doors and windows within 20 feet of the renovation on the same floor as the renovation on multi-story buildings, and/or close all doors and windows on all floors below that are the same horizontal distance from the renovation, pursuant to 40 C.F.R. §745.85(a)(2)(ii)(A)
Level 2a	<u>7-Exterior Renovations:</u> Failure by the renovation firm, before beginning the renovation, to 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, pursuant to 40 C.F.R. §745.85(a)(2)(ii)(B)
Level 2a	<u>8-Exterior Renovations:</u> Failure by the renovation firm, before beginning the renovation, 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, pursuant to 40 C.F.R. §745.85(a)(2)(ii)(C)
Level 2a	<u>9-Exterior Renovations:</u> Failure by the renovation firm, before beginning the renovations in certain situations, to take extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate other buildings or other areas of the property or migrate to adjacent properties, pursuant to 40 C.F.R. §745.85(a)(2)(ii)(D)
Level 1a	<u>10-Prohibited and restricted practices:</u> Failure to prohibit the use of open-flame burning or torching of lead-based paint during renovations, pursuant to 40 C.F.R. §745.85(a)(3)(i)
Level 1a	<u>11-Prohibited and restricted practices:</u> Failure to prohibit the use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, unless such machines are used with HEPA exhaust control, pursuant to 40 C.F.R. §745.85(a)(3)(ii)
Level 1a	<u>12-Prohibited and restricted practices:</u> Failure to restrict the operating of a heat gun on lead-based paint to temperatures below 1100 degrees Fahrenheit, pursuant to 40 C.F.R. §745.85(a)(3)(iii)
Level 2a	<u>Waste from renovations:</u> Failure to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal and/or failure to cover a chute if it is used to remove waste from the work area, pursuant to 40 C.F.R. §745.85(a)(4)(i)

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⁴⁸ Circumstance Level	Rule Violation
Level 2a	<u>13-Waste from renovations</u> : Failure at the conclusion of each work day and/or at the conclusion of the renovation, to ensure that waste that has been collected from renovation activities was stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris, pursuant to 40 C.F.R. §745.85(a)(4)(ii)
Level 2a	<u>14-Waste from renovations</u> : Failure by the renovation firm to contain the waste to prevent release of dust and debris during the transport of waste from renovation activities, pursuant to 40 C.F.R. §745.85(a)(4)(iii)
Level 1a	<u>15-Cleaning the work area</u> : Failure by the renovation firm to clean the work area until no dust, debris or residue remains after the renovation has been completed, pursuant to 40 C.F.R. §745.85(a)(5)
Level 1a	<u>16-Cleaning the work area</u> : Failure by the renovation firm to collect all paint chips and debris and seal the material in a heavy-duty bag without dispersing any of it, pursuant to 40 C.F.R. §745.85(a)(5)(i)(A)
Level 1a	<u>17-Cleaning the work area</u> : Failure by the renovation firm to remove the protective sheeting by misting the sheeting before folding it, folding the dirty side inward, and/or either taping shut to seal or sealing it in heavy-duty bags, pursuant to 40 C.F.R. §745.85(a)(5)(i)(B)
Level 1a	<u>18-Cleaning the work area</u> : Failure by the renovation firm to keep in place the plastic sheeting used to isolate contaminated rooms from non-contaminated rooms until after the cleaning and removal of other sheeting, pursuant to 40 C.F.R. §745.85(a)(5)(i)(B)
Level 1a	<u>19-Cleaning the work area</u> : Failure by the renovation firm to dispose of the plastic sheeting, used as occupant protection at the renovation site, as waste, pursuant to 40 C.F.R. §745.85(a)(5)(i)(B).
Level 1a	<u>20-Cleaning the work area</u> : Failure by the renovation firm to clean all objects and surfaces in the work area and within 2 feet of the work area, cleaning from higher to lower, pursuant to 40 C.F.R. §745.85(a)(5)(ii)
Level 1a	<u>21-Cleaning the work area</u> : Failure by the renovation firm to clean walls in the work area, starting at the ceiling and working down to the floor, by either vacuuming with a HEPA vacuum or wiping with a damp cloth, pursuant to 40 C.F.R. §745.85(a)(5)(ii)(A)
Level 1a	<u>22-Cleaning the work area</u> : Failure by the renovation firm to thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum and/or failure to use a HEPA vacuum equipped with a beater bar when vacuuming carpets and rugs, pursuant to 40 C.F.R. §745.85(a)(5)(ii)(B).
Level 1a	<u>23-Cleaning the work area</u> : Failure by the renovation firm to wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth and/or failure to mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the 2-bucket mopping method, or using a wet mopping system, pursuant to 40 C.F.R. §745.85(a)(5)(ii)(C)
Level 1a	<u>24-Standards for post-renovation cleaning verification</u> : Failure by a renovator to perform a visual inspection of the interior work area to determine whether dust, debris or residue is still present, to remove dust, debris or residue by re-cleaning if necessary, and/or perform another visual inspection, pursuant to 40 C.F.R. §745.85(b)(1)(i)
Level 1a	<u>25-Standards for post-renovation cleaning verification</u> : Failure by a renovator to verify that each interior windowsill in the work area has been adequately cleaned using a disposable cleaning cloth(s) compared to the cleaning verification card following the prescribed procedures, pursuant to 40 C.F.R. §745.85 (b)(1)(ii) (A) or failure by a certified renovator to arrange for the collection dust clearance samples as part of optional dust clearance testing, pursuant to 40 C.F.R. §745.85(b)(1)(ii)(A)
Level 1a	<u>26-Standards for post-renovation cleaning verification</u> : Failure by a renovator to verify that each interior floor in the work area has been adequately cleaned using a disposable cleaning cloth(s) compared to the cleaning verification card following the prescribed procedures pursuant to 40 C.F.R. §745.85 (b)(1)(ii) (B) or failure by a certified renovator to arrange for the collection dust clearance samples as part of optional dust clearance testing, pursuant to 40 C.F.R. §745.85(b)(1)(ii)(B)
Level 1a	<u>27-Standards for post-renovation cleaning verification</u> : Failure by a renovator to wait until interior work area passes post-renovation cleaning verification before removing signs, pursuant to 40 C.F.R. §745.85(b)(1)(iii)

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⁴⁸ Circumstance Level	Rule Violation
Level 1a	<u>28-Standards for post-renovation cleaning verification:</u> Failure by a renovator to perform a visual inspection of the exterior work area to determine whether dust, debris or residue is still present, to remove dust, debris or residue by re-cleaning if necessary, and/or perform another visual inspection, pursuant to 40 C.F.R. §745.85(b)(2)
Level 1a	<u>29-Standards for post-renovation cleaning verification:</u> Failure by a renovator to wait until exterior work area passes visual inspection before removing signs, pursuant to 40 C.F.R. §745.85(b)(2)
Level 1a	<u>30-Standards for post-renovation cleaning verification:</u> Failure by a renovation firm to arrange for the performance of optional dust clearance testing at the conclusion of the renovation if required to do so by the person contracting for the renovation, a Federal, State, Territorial, Tribal, or local law or regulation, pursuant to 40 C.F.R. §745.85(c)
Level 1a	<u>31-Standards for post-renovation cleaning verification:</u> Failure to have the optional dust clearance testing performed by a certified inspector, risk assessor or dust sampling technician at the conclusion of the renovation, pursuant to 40 C.F.R. §745.85(c)(2)
Level 1a	<u>32-Standards for post-renovation cleaning verification:</u> Failure by a renovation firm to re-clean the work area until dust clearance results are below clearance standards, pursuant to 40 C.F.R. §745.85(c)(3)
Section X Work Practice Standards for Conducting Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities	
Level 1a	<u>1-Target Housing and Child-occupied Facilities:</u> Failure to perform all lead-based paint activities pursuant to the work practice standards, appropriate requirements, methodologies and clearance levels specified and referenced, pursuant to 40 C.F.R. §745.227(a)(1)
Level 2a	<u>2- Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead-based paint activity described by the certified individual as an inspection, lead-hazard screen, risk assessment or abatement, is performed by a certified individual in compliance with the appropriate requirements, pursuant to 40 C.F.R. §745.227(a)(2)
Level 2a	<u>3-Target Housing and Child-occupied Facilities:</u> Failure to ensure that an inspection is conducted only by a person certified by EPA as an inspector or risk assessor and, if conducted, must be conducted according to the prescribed procedures, pursuant to 40 C.F.R. §745.227(b)(1)
Level 1a	<u>4-Target Housing and Child-occupied Facilities:</u> Failure in an inspection to select locations according to documented methodologies to be tested for the presence of lead-based paint, pursuant to 40 C.F.R. §745.227(b)(2)
Level 3a	<u>5-Target Housing and Child-occupied Facilities:</u> Failure to test for lead-based paint each interior and/or exterior component with a distinct painting history in a residential dwelling and/or child-occupied facility, pursuant to 40 C.F.R. §745.227(b)(2)(i)
Level 3a	<u>6-Target Housing and Child-occupied Facilities:</u> Failure to test for lead-based paint each interior and/or exterior component with a distinct painting history in a multi-family dwelling, pursuant to 40 C.F.R. §745.227(b)(2)(ii)
Level 5a	<u>7-Target Housing and Child-occupied Facilities:</u> Failure to ensure that paint sampled for analysis to determine the presence of lead was conducted using documented methodologies which incorporate adequate quality control procedures, pursuant to 40 C.F.R. §745.227(b)(3)(i)
Level 3a	<u>8- Target Housing and Child-occupied Facilities:</u> Failure to ensure that all collected paint chip samples were analyzed according to 40 C.F.R. §745.227(f) to determine if they contain detectable levels of lead that can be quantified numerically, pursuant to 40 C.F.R. §745.227(b)(3)(ii)
Level 3a	<u>9- Target Housing and Child-occupied Facilities:</u> Failure of an inspector or risk assessor to prepare an inspection report that includes the required information, pursuant to 40 C.F.R. §745.227(b)(4)
Level 2a	<u>10-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen is conducted only by a person certified by EPA as a risk assessor, pursuant to 40 C.F.R. §745.227(c)(1)
Level 3a	<u>11- Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes the collection of background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under, pursuant to 40 C.F.R. §745.227(c)(2)(i)

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⁴⁸ Circumstance Level	Rule Violation
Level 3a	<u>12-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes a visual inspection to determine the presence of deteriorated paint, pursuant to 40 C.F.R. §745.227(c)(2)(ii)(A)
Level 3a	<u>13-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes a visual inspection to locate at least two dust samples performed according to the prescribed methodologies, pursuant to 40 C.F.R. §745.227(c)(2)(ii)(B)
Level 3a	<u>14- Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes the collection and analysis of dust samples according to the prescribed methodologies, pursuant to 40 C.F.R. §745.227(c)(3)
Level 3	<u>15-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes the collection and analysis of paint samples according to the prescribed methodologies, pursuant to 40 C.F.R. §745.227(c)(4)
Level 3a	<u>16-Target Housing and Child-occupied Facilities:</u> Failure of a risk assessor to prepare a lead hazard screen report that includes the required information, pursuant to 40 C.F.R. §745.227(c)(5)
Level 3a	<u>17-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a risk assessment is conducted only by a person certified by EPA as a risk assessor, pursuant to 40 C.F.R. §745.227(d)(1)
Level 3a	<u>8-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a risk assessment includes a visual inspection of the residential dwelling or child-occupied facility to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards, pursuant to 40 C.F.R. §745.227(d)(2)
Level 3a	<u>19-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes the collection of background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under, pursuant to 40 C.F.R. §745.227(d)(3)
Level 3a	<u>20-Target Housing and Child-occupied Facilities:</u> Failure to test for the presence of lead on each surface determined to have a distinct painting history, pursuant to 40 C.F.R. §745.227(d)(4)
Level 3a	<u>21-Residential Dwellings:</u> Failure to collect and analyze for lead concentration dust samples (either composite or single-surface samples) from the interior window sill(s) and floor(s) in all living areas where one or more children, age 6 and under, are most likely to come into contact with dust, pursuant to 40 C.F.R. §745.227(d)(5)
Level 3a	<u>22-Multi-family Dwellings and Child-occupied Facilities:</u> Failure to collect and analyze interior window sill and floor dust samples (either composite or single-surface samples) for lead concentration from the prescribed locations, pursuant to 40 C.F.R. §745.227(d)(6)
Level 3a	<u>23-Child-occupied Facilities:</u> Failure to collect and analyze interior window sill and floor dust samples (either composite or single-surface samples) for lead concentration in each room, hallway or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility pursuant to 40 C.F.R. §745.227(d)(7)
Level 3a	<u>24-Target Housing and Child-occupied Facilities:</u> Failure to collect and analyze soil samples for lead concentrations in the prescribed locations, pursuant to 40 C.F.R. §745.227(d)(8)
Level 3a	<u>25-Target Housing and Child-occupied Facilities:</u> Failure to conduct all paint, dust, or soil sampling or testing using documented methodologies that incorporate adequate quality control procedures, pursuant to 40 C.F.R. §745.227(d)(9)
Level 3a	<u>26-Target Housing and Child-occupied Facilities:</u> Failure to analyze any collected paint chip, dust, or soil samples according to 40 C.F.R. §745.227(f) to determine if they contain detectable levels of lead that can be quantified numerically, pursuant to 40 C.F.R. §745.227(d)(10)
Level 3a	<u>27-Target Housing and Child-occupied Facilities:</u> Failure of risk assessor to prepare a risk assessment report that includes the required information, pursuant to 40 C.F.R. §745.227(d)(11)
Level 1a	<u>28-Target Housing and Child-occupied Facilities:</u> Failure to ensure that an abatement is conducted only by a person certified by EPA, and, if conducted, is conducted according to the prescribed procedures, pursuant to 40 C.F.R. §745.227(e)(1)

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Level 3a	<u>29- Target Housing and Child-occupied Facilities:</u> Failure of a supervisor to be onsite for each abatement project during all work site preparation, during the post-abatement cleanup of work areas, and to be onsite at other times during the abatement or available by telephone, pager or answering service and able to be present at the work site in no more than 2 hours, pursuant to 40 C.F.R. §745.227(e)(2)
Level 3a	<u>30- Target Housing and Child-occupied Facilities:</u> Failure of a supervisor and the certified firm employing that supervisor to ensure that all abatement activities are conducted according to the requirements of 40 C.F.R. §745.227(e) and all other Federal, State and local requirements, pursuant to 40 C.F.R. §745.227(e)(3)
Level 3a	<u>31-Target Housing and Child-occupied Facilities:</u> Failure of a renovation firm to notify EPA of lead-based paint abatement activities or to update notification as prescribed and by the designated deadline, pursuant to 40 C.F.R. §745.227(e)(4)(i-v)
Level 3a	<u>32-Target Housing and Child-occupied Facilities:</u> Failure of a renovation firm to include the designated information in each notification, pursuant to 40 C.F.R. §745.227(e)(4)(vi)
Level 2a	<u>33-Target Housing and Child-occupied Facilities:</u> Failure by a certified firm to accomplish written or electronic notification via one of the prescribed methods, pursuant to 40 C.F.R. §745.227(e)(4)(vii)
Level 4a	<u>34-Target Housing and Child-occupied Facilities:</u> Failure of a renovation firm to begin lead-based paint abatement activities on the date and at the location specified in either the original or updated notification, pursuant to 40 C.F.R. §745.227(e)(4)(viii)
Level 2a	<u>35-Target Housing and Child-occupied Facilities:</u> Failure of a renovation firm or individual to notify EPA before engaging in lead-based paint abatement activities defined in 40 C.F.R. §745.223, pursuant to 40 C.F.R. §745.227(e)(4)(ix)
Level 3a	<u>36-Target Housing and Child-occupied Facilities:</u> Failure of a renovation firm or individual to develop a written occupant protection plan for all abatement projects and in accordance with the prescribed procedures, pursuant to 40 C.F.R. §745.227(e)(5)
Level 2a	<u>37-Target Housing and Child-occupied Facilities:</u> Failure to prohibit the use of open-flame burning or torching of lead-based paint during abatement activities pursuant to 40 C.F.R. §745.227(e)(6)(i)
Level 2a	<u>38-Target Housing and Child-occupied Facilities:</u> Failure to prohibit the use of machines that remove lead-based paint through sanding, grinding, abrasive blasting, or sandblasting, unless such machines are used with HEPA exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency, pursuant to 40 C.F.R. §745.227(e)(6)(ii)
Level 2a	<u>39-Target Housing and Child-occupied Facilities:</u> Failure to prohibit the dry scraping of lead-based paint unless it is used in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than 6 square feet in any one room, hallway, or stairwell or totaling no more than 20 square feet on exterior surfaces, pursuant to 40 C.F.R. §745.227(e)(6)(iii)
Level 2a	<u>40-Target Housing and Child-occupied Facilities:</u> Failure to restrict the operating of a heat gun on lead-based paint at temperatures below 1100 degrees Fahrenheit, pursuant to 40 C.F.R. §745.227(e)(6)(iv)
Level 3a	<u>41-Target Housing and Child-occupied Facilities:</u> Failure to conduct soil abatement, when necessary, according to the prescribed methods, pursuant to 40 C.F.R. §745.227(e)(7)
Level 3a	<u>42-Target Housing and Child-occupied Facilities:</u> Failure to have a certified inspector or risk assessor perform the post-abatement clearance procedures, pursuant to 40 C.F.R. §745.227(e)(8)
Level 3a	<u>43-Target Housing and Child-occupied Facilities:</u> Failure by an inspector or risk assessor to perform a visual inspection after abatement to determine if deteriorated painted surfaces and/or visible amounts of dust, debris or residue are still present and to remove any hazards that still remain, pursuant to 40 C.F.R. §745.227(e)(8)(i)
Level 4a	<u>44-Target Housing and Child-occupied Facilities:</u> Failure to wait until the required visual inspection and any necessary post-abatement cleanups are completed before performing clearance sampling for lead in dust, pursuant to 40 C.F.R. §745.227(e)(8)(ii)
Level 1a	<u>45-Target Housing and Child-occupied Facilities:</u> Failure to take dust samples for clearance purposes using documented methodologies that incorporate adequate quality control procedures, pursuant to 40 C.F.R. §745.227(e)(8)(iii)

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Level 4a	<u>46-Target Housing and Child-occupied Facilities:</u> Failure to wait a minimum of 1 hour after completion of final post-abatement cleanup activities to collect dust samples for clearance purposes, pursuant to 40 C.F.R. §745.227(e)(8)(iv)
Level 4a	<u>47-Target Housing and Child-occupied Facilities:</u> Failure to collect the required dust samples from the prescribed surfaces in the designated rooms after conducting an abatement with containment between abated and unabated areas, pursuant to 40 C.F.R. §745.227(e)(8)(v)(A)
Level 4a	<u>48-Target Housing and Child-occupied Facilities:</u> Failure to collect the required dust samples from the prescribed surfaces in the designated rooms after conducting an abatement with no containment, pursuant to 40 C.F.R. §745.227(e)(8)(v)(B)
Level 4a	<u>49-Target Housing and Child-occupied Facilities:</u> Failure to conduct a visual inspection and clean horizontal, outdoor surfaces of visible dust and debris, perform visual inspection for paint chips on the dripline and remove and properly dispose of any paint chips found following an exterior paint abatement, pursuant to 40 C.F.R. §745.227(e)(8)(v)(C)
Level 4a	<u>50-Target Housing and Child-occupied Facilities:</u> Failure to select the rooms, hallways or stairwells for sampling according to documented methodologies, pursuant to 40 C.F.R. §745.227(e)(8)(vi)
Level 3a	<u>51-Target Housing and Child-occupied Facilities:</u> Failure by an inspector or risk assessor to compare the residual lead level from dust samples with clearance levels to determine if level exceeds the applicable clearance level, pursuant to 40 C.F.R. §745.227(e)(8)(vii)
Level 2a	<u>52-Target Housing and Child-occupied Facilities:</u> Failure by an inspector or risk assessor to reclean and retest the surface of components that were determined to have failed clearance testing after abatement, pursuant to 40 C.F.R. §745.227(e)(8)(vii)
Level 3a	<u>53-Target Housing and Child-occupied Facilities:</u> Failure to use the standard clearance levels for lead in dust of 40 µg/ft ² for floors, 250 µg/ft ² for interior window sills, and 400 µg/ft ² for window troughs to determine if a level in a sample exceeds the applicable clearance level, pursuant to 40 C.F.R. §745.227(e)(8)(viii)
Level 4a	<u>54-Target Housing and Child-occupied Facilities:</u> Failure to perform random sampling in a multi-family dwelling with similarly constructed and maintained residential dwellings according to the prescribed methods, pursuant to 40 C.F.R. §745.227(e)(9)
Level 4a	<u>55-Target Housing and Child-occupied Facilities:</u> Failure by a supervisor or project designer to prepare an abatement report that includes the required information, pursuant to 40 C.F.R. §745.227(e)(10)
Level 3a	<u>56-Target Housing and Child-occupied Facilities:</u> Failure to ensure that all paint chip, dust, or soil samples obtained are collected by a certified risk assessor or paint inspector and analyzed by an EPA-recognized laboratory, pursuant to 40 C.F.R. §745.227(f)
Level 5a	<u>57-Target Housing and Child-occupied Facilities:</u> Failure to limit composite dust sampling to only those situations specified, pursuant to 40 C.F.R. §745.227(g)
Level 3a	<u>58-Target Housing and Child-occupied Facilities:</u> Failure to make a determination on the presence of lead-based paint, pursuant to 40 C.F.R. §745.227(h)
Level 1a	<u>59-Target Housing and Child-occupied Facilities:</u> Failure of a firm that performs, offers or claims to perform renovations or dust sampling for compensation to obtain initial certification from EPA, under to 40 C.F.R. §745.226 pursuant to 40 CFR § 745.233
Section XI Lead-Based Paint Risk Assessments	
Level 2a	1-Failure of a person performing a risk assessment to be certified by EPA as a risk assessor, pursuant to 40 C.F.R. §745.227(d)(1)
Level 2a	2-Failure to conduct visual inspection for risk assessment or child-occupied facility to locate existence of deteriorated paint, assess extent and causes of deterioration, and other potential lead-based paint hazards, pursuant to 40 C.F.R. §745.227(d)(2)

Appendix B

Gravity-Based Penalty Matrices

GRAVITY-BASED PENALTY MATRIX FOR PRE, RRP, & LBP ACTIVITIES RULES⁴⁹

		Extent		
		MAJOR	SIGNIFICANT	MINOR
Target Housing:		one or more occupants under age 6 and/or pregnant woman	no information about age of the youngest occupant, or one or more occupants between ages of 6 and 17	no occupants under age 18
Child-Occupied Facilities:		one or more occupants under age 6 (by definition, a child-occupied facility is regularly visited by one or more children under 6)		renovation activities were completed during a period when children did not access the facility (<i>e.g.</i> , as summer vacation) and there is no continuity of enrollment (<i>i.e.</i> , the same children are not returning after the break). ⁵⁰
For Violations Occurring On or Before 1/12/2009: ⁵¹				
Circumstance				
HIGH	Level 1a	\$ 32,500	\$ 21,930	\$ 6,500
	Level 1b	\$ 11,000	\$ 7,740	\$ 2,580
	Level 2a	\$ 25,800	\$ 16,770	\$ 3,870
	Level 2b	\$ 10,320	\$ 6,450	\$ 1,550
MEDIUM	Level 3a	\$ 19,350	\$ 12,900	\$ 1,940
	Level 3b	\$ 7,740	\$ 5,160	\$ 780
	Level 4a	\$ 12,900	\$ 7,740	\$ 1,290
	Level 4b	\$ 5,160	\$ 3,220	\$ 520
LOW	Level 5a	\$ 6,450	\$ 3,870	\$ 650
	Level 5b	\$ 2,680	\$ 1,800	\$ 260
	Level 6a	\$ 6580	\$ 1,680	\$ 260
	Level 6b	\$ 1,290	\$ 640	\$ 130

⁴⁹ Since the “nature” of violations for training providers is unique, separate matrices are provided on page B3.

⁵⁰ In a situation where there is “no continuity of enrollment,” there are no children’s parents to whom information can be provided; therefore, information must only be provided to the owner and operator of the child-occupied facility.

⁵¹ The maximum civil monetary penalty for TSCA is \$32,500 and \$11,000, respectively, for violations occurring after 3/15/2004 through 1/12/2009.

Appendix B

Gravity-Based Penalty Matrices

		Extent		
		MAJOR	SIGNIFICANT	MINOR
Target Housing:		one or more occupants under age 6 and/or pregnant woman	no information about age of the youngest occupant, or one or more occupants between ages of 6 and 17	no occupants under age 18
Child-Occupied Facilities:		one or more occupants under age 6 (by definition, a child-occupied facility is regularly visited by one or more children under 6)		renovation activities were completed during a period when children did not access the facility (<i>e.g.</i> , as summer vacation) and there is no continuity of enrollment (<i>i.e.</i> , the same children are not returning after the break). ⁵²
For Violations Occurring After 1/12/2009: ⁵³				
HIGH	Level 1a	\$ 37,500	\$ 25,500	\$ 7,500
	Level 1b	\$ 16,000	\$ 8,500	\$ 2,840
	Level 2a	\$ 30,000	\$ 20,400	\$ 6,000
	Level 2b	\$ 11,340	\$ 7,090	\$ 1,710
MEDIUM	Level 3a	\$ 22,500	\$ 15,300	\$ 4,500
	Level 3b	\$ 8,500	\$ 5,670	\$ 850
	Level 4a	\$ 15,000	\$ 10,200	\$ 3,000
	Level 4b	\$ 5,670	\$ 3,540	\$ 580
LOW	Level 5a	\$ 7,500	\$ 5,100	\$ 1,500
	Level 5b	\$ 2,840	\$ 1,850	\$ 290
	Level 6a	\$ 3,000	\$ 2,040	\$ 600
	Level 6b	\$ 1,420	\$ 710	\$ 150

⁵² In a situation where there is “no continuity of enrollment,” there are no children’s parents to whom information can be provided; therefore, information must only be provided to the owner and operator of the child-occupied facility.

⁵³ The maximum civil monetary penalty for TSCA is \$37,500 and \$16,000, respectively, for violations occurring after 1/12/2009. Adjustments to the individual “a” levels below the maximum were made using the ratios established in the TSCA Penalty Guidelines matrix (45 Fed. Reg. 59771, September 10, 1980).

Appendix B

Gravity-Based Penalty Matrices

GRAVITY-BASED PENALTY MATRIX FOR TRAINING VIOLATIONS

Potential that the trainer's violations will affect human health by impairing the student's ability to learn:		Extent		
		MAJOR	SIGNIFICANT	MINOR
		eleven or more students attending class where violations occurred	six to ten students attending class where violations occurred	one to five students attending class where violations occurred
For Violations Occurring On or Before 1/12/2009: ⁵⁴				
Circumstance				
HIGH	Level 1a	\$ 32,500	\$ 21,930	\$ 6,450
	Level 2a	\$ 25,800	\$ 16,770	\$ 3,870
MEDIUM	Level 3a	\$ 19,350	\$ 12,900	\$ 1,940
	Level 4a	\$ 12,900	\$ 7,740	\$ 1,290
LOW	Level 5a	\$ 6,450	\$ 3,870	\$ 640
	Level 6a	\$ 2,580	\$ 1,680	\$ 260

Potential that the trainer's violations will affect human health by impairing the students ability to learn:		Extent		
		MAJOR	SIGNIFICANT	MINOR
		eleven or more students attending class where violations occurred	six to ten students attending class where violations occurred	one to five students attending class where violations occurred
For Violations Occurring After 1/12/2009: ⁵⁵				
HIGH	Level 1a	\$ 37,500	\$ 25,500	\$ 7,500
	Level 2a	\$ 30,000	\$ 20,400	\$ 6,000
MEDIUM	Level 3a	\$ 22,500	\$ 15,300	\$ 4,500
	Level 4a	\$ 15,000	\$ 10,200	\$ 3,000
LOW	Level 5a	\$ 7,500	\$ 5,100	\$ 1,500
	Level 6a	\$ 3,000	\$ 2,040	\$ 600

⁵⁴ The maximum civil monetary penalty is \$32,500 for violations occurring after 3/15/2004 through 1/12/2009.

⁵⁵ The maximum civil monetary penalty is \$37,500 for violations occurring after 1/12/2009. Adjustments to the individual levels below the maximum were made using the ratios established in the TSCA Penalty Guidelines matrix (45 Fed. Reg. 59771, September 10, 1980).

Appendix C Internet References for Policy Documents

The EPA website for information on the TSCA 406(b) Pre-Renovation Education Rule is:
<http://www.epa.gov/lead/pubs/leadrenf.htm>

The EPA website also maintains copies of applicable policies and other useful information:

EPA Home Page: <http://www.epa.gov>

Compliance and Enforcement Home Page: <http://www.epa.gov/compliance/>

TSCA Enforcement Policy and Guidance Documents:
<http://cfpub.epa.gov/compliance/resources/policies/civil/tsca/>

Supplemental Environmental Projects:
<http://cfpub.epa.gov/compliance/resources/policies/civil/seps/>

Final Supplemental Environmental Projects Policy (1998):
<http://www.epa.gov/compliance/resources/policies/civil/seps/fnlsep-hermn-mem.pdf>

Treatment of Lead-based Paint Abatement Work as a Supplemental Environmental Project in Administrative Settlements (Jan 2004):
<http://www.epa.gov/compliance/resources/policies/civil/seps/leadbasedabatement-sep012204.pdf>

Audit Policy: <http://www.epa.gov/compliance/incentives/auditing/auditpolicy.html>

Small Business Policy:
<http://www.epa.gov/compliance/incentives/smallbusiness/index.html>

Redelegation of Authority:
<http://www.epa.gov/compliance/resources/policies/civil/rcra/hqregenfcases-mem.pdf>

HUD Technical Guidelines for the Evaluation and Control of Lead Based Paint Hazards in Housing: <http://www.hud.gov/offices/lead/lbp/hudguidelines/index.cfm>

Documenting Penalty Calculations and Justifications of EPA Enforcement Actions, (Aug 1990):
<http://www.epa.gov/compliance/resources/policies/civil/rcra/caljus-strock-mem.pdf>

Amendments to Penalty Policies to Implement Penalty Inflation Rule 2008
<http://cfpub.epa.gov/compliance/resources/policies/civil/penalty/>

Appendix D List of Supplemental Environmental Projects (SEPs)

The following list of potential Supplemental Environmental Projects (SEPs) is not exhaustive, but is intended to offer some examples.⁵⁶

- Abatement of lead-based paint and/or lead-based paint hazards in target housing or child-occupied facilities in compliance with requirements of 40 C.F.R. § 227(e).
- Renovation (such as window or door replacement) that includes removal of components containing lead-based paint and/or lead-based paint hazards from target housing or child-occupied facilities, followed by clearance testing as defined in 40 C.F.R. § 227(e)(8).
- Risk assessment of target housing or child-occupied facilities to identify lead-based paint hazards, followed by correction of any hazards identified.
- Purchase of an XRF for a local health organization.
- Blood-lead level screening and/or treatment for children where Medicaid coverage is not available. (Blood-lead level screening and/or treatment for children underserved by Medicaid may also be appropriate, with approval from the Special Litigation and Projects Division in OECA.)
- Purchase and operate a mobile health clinic, including outfitting the mobile units (*e.g.*, blood lead level testing and treatment for children in public housing).
- Purchase and donate lead health screening equipment to schools, public health departments, clinics, *etc.*
- Provide free lab tests for lead in dust, soil and paint chip samples; make testing available to low-income homeowners, small rental property owners, and community-based organizations.

⁵⁶ Whether the Agency decides to accept a proposed SEP as part of a settlement, and the amount of any penalty mitigation that may be given for a particular SEP, is purely within EPA's discretion. (*See, Supplemental Environmental Projects Policy, May 1, 1998, page 3.*)