



U. S. ENVIRONMENTAL PROTECTION AGENCY

REGION 1 – New England

5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

September 27, 2019

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Robert Warren Lavalley III, President
ACM Group, Inc
50A Northwestern Drive Unit 10
Salem, New Hampshire 03079

Re: Civil Administrative Complaint for Penalties under the Toxic Substances Control Act;
In the Matter of ACM Group, Inc., TSCA-01-2019-0061

Dear Mr. Lavalley:

Enclosed please find an administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) issued by the U.S. Environmental Protection Agency, Region 1 (“EPA”) to ACM Group, Inc. (“ACM”). The Complaint is issued pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), and alleges violations of TSCA and implementing regulations known as the Renovation, Repair, and Painting (“RRP”) Rule [*Residential Property Renovation*, at 40 C.F.R. Part 745, Subpart E, and *Lead-Based Paint Activities*, at 40 C.F.R. Part 745, Subpart L].

The Complaint seeks a total civil penalty of \$11,512 for the violations of the RRP Rule alleged therein, and initiates a formal enforcement proceeding against ACM, pursuant to EPA administrative procedures known as the Consolidated Rules of Practice, set forth at 40 C.F.R. Part 22. The allegations in the Complaint are based on information obtained by EPA during an inspection conducted at an active worksite located at 99 Gates Street, Portsmouth, New Hampshire (the “Property”) on August 28, 2018.

You should refer to the enclosed Consolidated Rules of Practice to determine the options available to you in responding to this action. You are advised that such options include an opportunity to request a hearing. Please be aware that you are required to respond within thirty (30) days of receipt of this Complaint, in accordance with 40 C.F.R. § 22.5, by filing a written answer or paying the specific penalty proposed in the Complaint. Failure to respond within the time limit (or to obtain an extension of time upon a motion to the Regional Judicial Officer) will constitute an admission of the allegations in the Complaint and may result in the issuance of a default order imposing the full penalty without further proceedings. Also, please note that 40

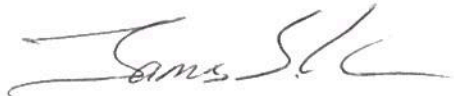
Civil Administrative Complaint for Penalties
ACM Group, Inc., TSCA-01-2019-0061

C.F.R. § 22.8 prohibits any unilateral discussion of the merits of this case with either the Regional Administrator or Presiding Officer.

Whether or not you request a hearing, ACM may request an informal conference with EPA representatives to discuss the details of the allegations, the amount of penalties, and the possibility of reaching a resolution of this matter on terms acceptable to both parties. To better inform any penalty discussions, we have enclosed the EPA penalty policy that applies to cases alleging the type of violation set forth in the Complaint.

If you wish to arrange an informal settlement conference, or if you have any questions concerning the enclosed Complaint, please contact or have your legal counsel contact Peter DeCambre, the EPA Region 1 attorney handling this matter, at (617) 918-1890 or at decambre.peter@epa.gov.

Sincerely,



Karen McGuire, Director *for*
Enforcement Compliance Assurance Division
EPA Region 1 – New England

Enclosures –

- Complaint and Notice of Opportunity for Hearing
- *Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits [40 C.F.R. Part 22]*
- *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule (August 2010)*
- Small Business Resources Information Sheet
- *Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer*

cc: Jason Page, City of Portsmouth, NH Building Code Department
Jordan Alves, EPA Region 1
Peter DeCambre, EPA Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND**

In the Matter of:)
)
ACM GROUP, INC)
50A Northwestern Drive)
Unit 10)
Salem, New Hampshire 03079,)
)
Respondent.)
)
Proceeding under Section 16(a) of the)
Toxic Substances Control Act,)
42 U.S.C. § 2615(a).)
)

Docket No.
TSCA-01-2019-0061

**COMPLAINT
AND
NOTICE OF OPPORTUNITY
FOR HEARING**

1. This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued by Complainant, the U. S. Environmental Protection Agency (“EPA”), pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), and 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. Part 22. The Complainant is the Director of the Enforcement and Compliance Assurance Division, EPA, Region 1 – New England.

2. The Respondent in this action, ACM Group, Inc., of Salem, New Hampshire, is hereby notified of Complainant’s determination that it has violated Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, and federal regulations promulgated under TSCA set forth at 40 C.F.R. Part 745, Subpart E (“Renovation, Repair and Painting Rule” or “RRP Rule”). Respondent is also hereby notified that Complainant seeks civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides that violations of TSCA Sections 15 or 409 are subject to the assessment by Complainant of civil and/or criminal penalties.

I. STATUTORY AND REGULATORY AUTHORITY

3. In 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. § 4851 et seq., in response to findings that low-level lead poisoning is widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint, and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. Among the stated purposes of the Act is ensuring that the existence of lead-based paint hazards be taken into account in the rental and renovation of homes and apartments. To carry out these purposes, the Act added a new section to TSCA, entitled *Subchapter IV – Lead Exposure Reduction*, which includes TSCA Sections 401- 412, 15 U.S.C. §§ 2681-2692.

4. In 1996, EPA promulgated regulations to implement Section 402(a) of TSCA [*Lead-Based Paint Activities Training and Certification – Regulations*], 15 U.S.C. § 2682(a). The regulations under TSCA Section 402(a) are set forth at 40 C.F.R. Part 745, Subpart L [*Lead-Based Paint Activities*, 40 C.F.R. §§ 745.220-745.239], commonly referred to as the “Lead-Based Paint Activities, Certification, and Training Rule” or the “LBP Activities Rule.” In 1998, EPA promulgated regulations to implement Section 406(b) of TSCA [*Lead Hazard Information Pamphlet – Renovation of Target Housing*], 15 U.S.C. § 2686(b), and those regulations are set forth at 40 C.F.R. Part 745, Subpart E [*Residential Property Renovation*, 40 C.F.R. §§ 745.80-745.92], commonly referred to as the “Pre-Renovation Education Rule” or “PRE Rule.”

5. In 2008, EPA promulgated regulations to implement Section 402(c)(3) of TSCA [*Lead-Based Paint Activities Training and Certification – Renovation and Remodeling – Certification Determination*], 15 U.S.C. § 2682(c)(3), by amending both the PRE Rule at 40 C.F.R. Part 745, Subpart E, as well as the LBP Activities Rule at 40 C.F.R. Part 745, Subpart L, now commonly referred to as the “RRP Rule.”

6. The RRP Rule sets forth procedures and requirements for, among other things, the accreditation of training programs, certification of renovation firms and individual renovators, work practice standards for renovation, repair, and painting activities in target housing and child-occupied facilities, and the establishment and retention of records to document compliance.

7. Pursuant to Section 401(17) of TSCA, as amended, 15 U.S.C. § 2681(17), the housing stock addressed by the Act and the RRP Rule is “target housing,” defined as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing). *See* 40 C.F.R. § 745.103.

8. Pursuant to 40 C.F.R. § 745.82, the requirements of the RRP Rule apply to all renovations performed for compensation in target housing, as defined in TSCA Section 401(17) and 40 C.F.R. § 745.103, and in “child-occupied facilities,” as defined in 40 C.F.R. § 745.83.

9. Pursuant to Section 401(14) of TSCA, 15 U.S.C. § 2681(14), and 40 C.F.R. § 745.103, the term “residential dwelling” means either a single-family dwelling, including attached structures such as porches and stoops, or a single-family dwelling unit in a structure that

contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

10. Pursuant to 40 C.F.R. § 745.83, the term “firm” means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

11. Pursuant to 40 C.F.R. § 745.83, the term “renovation” means 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 or modification 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, ceiling, 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. The term renovation does not include minor repair and maintenance activities.

12. Pursuant to 40 C.F.R. § 745.83, the term “minor repair and maintenance activities” means activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for

interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by 40 C.F.R. § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas.

13. Pursuant to 40 C.F.R. § 745.83, the term “renovator” means an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or by an EPA-authorized State or Tribal program.

14. Under the RRP Rule, except in circumstances specified by the regulations that are not relevant to Respondent or the violations alleged in this Complaint, firms performing renovations in target housing and child-occupied facilities are, among other things, required to:

- i. Obtain an EPA certification for the firm prior to performing renovations;
- ii. Provide the EPA-approved pamphlet to a lessee or adult occupant before renovation activities begin and obtain written verification that the pamphlet was provided;
- iii. Ensure that a certified renovator either performs the renovation or directs a properly trained worker to perform the renovation;
- iv. Perform renovations in compliance with applicable work practice standards for any renovation, repair, and painting activities conducted; and,
- v. Retain all records necessary to demonstrate compliance with the same.

See 40 C.F.R. §§ 745.81(a)(2), 745.84(a), 745.89(d), 745.85, and 745.86(a) and (b).

15. Pursuant to Section 409 of TSCA, it is unlawful for any person to fail to comply with any rule issued under Subchapter IV of TSCA (such as the RRP Rule). Pursuant to 40

C.F.R. § 745.87(a), the failure to comply with a requirement of the RRP Rule is a violation of Section 409 of TSCA.

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

17. Section 16(a) of TSCA and 40 C.F.R. § 745.87(d) authorize the assessment of a civil penalty of up to \$25,000 per violation per day of the RRP Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and EPA’s Civil Monetary Penalty Inflation Adjustment Rule set forth at 40 C.F.R. Part 19 (“Penalty Inflation Rule”), each such TSCA violation that occurred after December 6, 2013, is subject to penalties of up to \$37,500 per day per violation. *See* 78 Fed. Reg. 66643 (November 6, 2013). Pursuant to the 2015 Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461 note, and the 2019 Penalty Inflation Rule, the \$37,500 maximum penalty was raised to \$39,873 for each such violation that occurs after November 2, 2015, and for which penalties are assessed on or after February 6, 2019. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 84 Fed. Reg. 2056 (February 6, 2019).

II. GENERAL ALLEGATIONS

18. Respondent, ACM Group, Inc. (“ACM”), is a New Hampshire company organized in 2018 with its principal business office located at 50A Northwestern Drive, Salem, New Hampshire. ACM is a contractor primarily engaged in construction, renovation, restoration and demolition work.

19. August 28, 2018, a duly-authorized EPA inspector conducted an RRP compliance inspection at an active worksite located at 99 Gates Street Portsmouth, New Hampshire (the “Inspection”). The property located at 99 Gates Street is a single-family residential home originally built in 1801 (the “Property”).

20. During the Inspection, the EPA inspector and a representative of the City of Portsmouth, NH Building Code Department met with Robert Lavallee, owner of ACM, and Joseph Terravecchia, owner of Terravecchia Building & Restoration, Inc. (“Terravecchia”). Both companies, ACM and Terravecchia, were performing renovation work at the Property which included, among other things, removing aluminum siding and painted clapboards on the exterior of the Property. During the Inspection, EPA sought records and other information relative to Respondent’s compliance with RRP Rule requirements. During the Inspection, the EPA inspector observed paint chips and construction debris scattered around the exterior of the Property.

21. At all times relevant to the allegations in this Complaint, Respondent performed renovation activities which constituted a “renovation” within the meaning of 40 C.F.R. § 745.83, at the Property.

22. The renovation performed by Respondent at the Property constituted a renovation for compensation within the meaning of TSCA Section 406(b) and the RRP Rule. The renovation described in Paragraph 20 above did not fall within any exemption set forth in 40 C.F.R. § 745.82.

23. The Property is “target housing” as defined in Section 401(17) of TSCA and 40 C.F.R. § 745.103. Furthermore, the Property does not satisfy the requirements for an exemption under the provisions, TSCA (including 15 U.S.C. § 2681(17)), or the RRP Rule (including 40 C.F.R. § 745.82).

24. At all times relevant to the violations alleged in this Complaint, Respondent was a “firm,” as defined in 40 C.F.R. § 746.83.

III. VIOLATIONS

25. EPA has identified the following violations of TSCA and the RRP Rule based on documents and other information obtained from Respondent during, or as a result of, the Inspection and EPA’s investigation of the facts and circumstances underlying the violations.

Count One

Failure to Obtain Firm Certification

26. Paragraphs 1 through 25, above, are incorporated by reference as if fully set forth herein.

27. Pursuant to 40 C.F.R. § 745.89(a), firms performing renovations for compensation must apply to EPA for certification to perform renovations or dust sampling. To apply, a firm must submit to EPA a completed “Application for Firms,” signed by an authorized agent of the firm, and pay at least the correct amount of fees.

28. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), no firm may perform, offer, or claim to perform renovations without certification from EPA under 40 C.F.R. § 745.89 in target housing, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (b).

29. Respondent had not obtained firm certification prior to beginning renovation activities at the Property. Furthermore, Respondent did not satisfy the requirements for an exception to the certification provisions of TSCA or the RRP Rule.

30. Respondent's failure to obtain firm certification prior to beginning renovation activities at the Property constitutes a violation of 40 C.F.R §§ 745.89(a) and 745.81(a)(2)(ii), and Section 409 of TSCA.

COUNT TWO

Failure to Cover Ground with Plastic Sheeting

31. Paragraphs 1 through 30, above, are incorporated by reference as if fully set forth herein.

32. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), for exterior renovations, firms must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater.

33. While performing exterior renovations including removing aluminum siding and painted clapboards at the Property, Respondent did not cover the ground with plastic sheeting or other impermeable material in the work area to collect falling paint debris.

34. Respondent's failure to ensure that the ground was covered with plastic sheeting or other impermeable material extending 10 feet beyond the perimeter of surfaces undergoing

renovation or a sufficient distance to collect falling paint debris, whichever is greater, at the Property constitutes a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(ii)(C), and Section 409 of TSCA.

COUNT THREE

Failure to Retain Compliance Records

35. Paragraphs 1 through 34, above, are incorporated by reference as if fully set forth herein.

36. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations at target housing must retain for a period of at least three years following completion of a renovation all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E. The records to be retained include, in pertinent part, written proof of receipt or delivery of pre-renovation education information (the pamphlet) pursuant to 40 C.F.R. § 745.86(b)(2)-(4), as well as documentation of compliance with work practice standards and certified renovator requirements pursuant to 40 C.F.R. § 745.86(b)(6).

37. Respondent's failure to retain all records necessary to demonstrate compliance with the RRP Rule, constituted a violation of 40 C.F.R. §§ 745.86(a) and (b) and Section 409 of TSCA.

IV. PROPOSED PENALTY

38. Section 409 of TSCA and 40 C.F.R. § 745.87 provide that, for purposes of enforcing the RRP Rule under TSCA, the penalty for each violation under TSCA Section 16 shall be no more than \$25,000. Pursuant to the Debt Collection Improvement Act, the 2015

Civil Penalty Inflation Adjustment Act, and EPA's Penalty Inflation Rule (40 C.F.R. Part 19), the maximum penalty for each such TSCA violation is \$39,873 for violations occurring after November 2, 2015, and for which penalty assessment is on or after February 6, 2019.

39. In determining the amount of any penalty to be assessed, Section 16(a) of TSCA requires EPA to consider the nature, circumstances, extent and gravity of the violations and, with respect to the violator, ability to pay, the effect of the proposed penalty on the ability of the violator to continue to do business, any history of prior such violations, the degree of culpability of the violator, and such other matters as justice may require. *See* 15 U.S.C. § 2615(a)(2)(B).

40. To assess a penalty for the violations alleged herein, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's August 2010 policy document, entitled *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* ("RRP Penalty Policy"), a copy of which is enclosed with this Complaint. The RRP Penalty Policy provides a rational, consistent, and equitable calculation methodology for applying the above-listed statutory penalty factors to specific cases. Complainant proposes that Respondent be assessed a civil penalty in the amount of **eleven thousand five hundred twelve dollars (\$11,512)** for the TSCA violations alleged in this Complaint. *See* Attachment A (Proposed Penalty Summary) explaining the reasoning for this penalty. The provisions violated and the corresponding penalties are as follows:

Complaint and Notice of Opportunity for Hearing
ACM Group, Inc., TSCA-01-2019-0061

Count	Regulation Violated	Description	Penalty
1	40 C.F.R § 745.81(a)(2)(ii) and 89(a)	Failure to Obtain Firm Certification	\$4,667
2	40 C.F.R. § 745.85(a)(2)(ii)(C) and 89(d)(3)	Failure to Cover Ground with Plastic Sheeting	\$6,223
3	40 C.F.R. § 745.86(a) and (b)	Failure to Maintain Required Records	\$ 622
	Total		\$11,512

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

41. As provided by Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and in accordance with 40 C.F.R. § 22.14 of the Consolidated Rules of Practice, Respondent has a right to request a hearing on any material fact alleged in this Complaint or on the appropriateness of the proposed penalty. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22. A request for a hearing must be incorporated into a written Answer. **Respondent must file the original and one copy of the written Answer to this Complaint within thirty (30) days of receipt of this Complaint.** Respondent shall send the Answer to the Regional Hearing Clerk at the following address:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100 (ORC 04-6)
Boston, Massachusetts 02109-3912

Respondent shall serve a copy of the Answer, and any other documents submitted in this proceeding, to Complainant's counsel at the following address:

Peter DeCambre, Senior Enforcement Counsel
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100 (ORC 04-3)
Boston, MA 02109-3912

In its Answer, Respondent may contest any material fact contained in the Complaint. The Answer shall directly admit, deny, or explain each of the factual allegations contained in the Complaint and shall state: (i) the circumstances or arguments alleged to constitute the grounds of any defense; (ii) the facts Respondent disputes; (iii) the basis for opposing any proposed relief; and, (iv) whether a hearing is requested. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. Any failure of Respondent to admit, deny, or explain any material fact contained in the Complaint constitutes an admission of that allegation. *See* 40 C.F.R. § 22.15 for the required contents of an Answer.

42. The filing of service of documents other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by email, consistent with the “Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer,” a copy of which has been provided with this Complaint.

43. If Respondent fails to file a timely Answer to the Complaint, Respondent may be found to be in default, pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent’s right to contest such factual allegations under Section 16(a)(2)(A) of TSCA. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final.

VI. SETTLEMENT CONFERENCE

44. Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with the EPA concerning the alleged violations. Such conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement shall be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA Region 1.

45. Please note that a request for an informal settlement conference does not extend the period within which a written Answer must be submitted to avoid default but that the deadline by which Respondent must file an Answer is only extended on a motion granted by the Regional Judicial Officer in accordance with the Consolidated Rules of Practice. To explore the possibility of settlement in this matter, Respondent should contact Peter DeCambre, Senior Enforcement Counsel, at the address provided above, or by calling him at (617) 918-1890 (direct). Mr. DeCambre has been designated to represent Complainant in this matter and is authorized, under 40 C.F.R. § 22.5(c)(4), to receive service on behalf of Complainant.

VII. QUICK RESOLUTION

46. Under Section 22.18(a) of the Consolidated Rules of Practice, Respondent has the option of resolving this matter at any time by paying the penalty proposed in the Complaint in full.

47. Payment of the penalty must be made by submitting a bank, cashier's or certified check payable to the "Treasurer, United States of America." The check should reference the

Complaint and Notice of Opportunity for Hearing
ACM Group, Inc., TSCA-01-2019-0061

name and docket number of this proceeding (*In re ACM Group, Inc.*, TSCA-01-2019-0061) and shall be forwarded to:

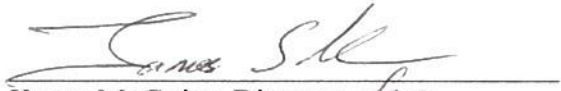
U.S. Environmental Protection Agency
Fines and Penalties
P.O. Box 979077
St. Louis, MO 63197-9000

48. Copies of the check must also be mailed to the Regional Hearing Clerk and Peter DeCambre at the addresses referenced above. For notice of payment to Mr. DeCambre, in lieu of mailing, such notice may be given via e-mail to decambre.peter@epa.gov.

49. If Respondent pays the proposed penalty in full within thirty (30) days after receiving this Complaint, then Respondent need not file an Answer to the Complaint. If Respondent wishes to resolve this matter without having to file an Answer but needs additional time in which to do so, Respondent may file a written statement with the Regional Hearing Clerk at the address above within thirty (30) days of receiving the Complaint. The written statement must specify that Respondent agrees to pay the penalty within sixty (60) days of receipt of the Complaint. Failure to make such payment within sixty (60) days may subject Respondent to a default action.

50. Neither the assessment nor payment of an administrative penalty shall affect Respondent's continuing obligation to comply with all applicable requirements of federal law.

Complaint and Notice of Opportunity for Hearing
ACM Group, Inc., TSCA-01-2019-0061



Karen McGuire, Director *for*
Enforcement Compliance Assurance Division
EPA Region 1 – New England

Date: 9/27/19

PROPOSED PENALTY SUMMARY

This Summary provides a justification for the proposed penalty calculation in the administrative penalty action against ACM Group, Inc. (“ACM”) which seeks to assess a civil penalty in the amount of **\$11,512** for alleged violations of the Renovation, Repair and Painting (“RRP”) Rule. The penalty was calculated according to EPA’s August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (“LBP Consolidated ERPP”).¹ A breakdown of the penalty is set forth below.

VIOLATIONS

COUNT 1 - Failure to Obtain Initial Firm Certification from EPA

Provision Violated: 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a) requires that a firm performing, offering, or claiming to perform renovations or dust sampling for compensation must obtain initial certification from EPA unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82(a) or (b).

Circumstance Level: The failure to obtain firm certification prior to performing renovations or dust sampling results in a medium probability of a renovation firm failing to comply with the work practice standards of 40 C.F.R § 745.85. As a result, under the LBP Consolidated ERPP Appendix A, a violation of 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a) is a Level 3a violation.

Extent of Harm: The LBP Consolidated ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living there. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. In this case, since there was no one under 18 years old known to be living in the affected units at the time of the violations, each violation warrants a *minor* extent factor under the RRP Penalty Policy.

Respondent failed to obtain certification from EPA before beginning the renovation at the following target housing property:

Respondent	Work Site Address	Work Date	Children /Ages	Extent of Harm	Gravity-Based Penalty
ACM	99 Gates Street Portsmouth, NH	8/28/18	None	Minor	\$4,667

¹ Section 409 of TSCA and 40 C.F.R. § 745.87 provide that, for purposes of enforcing the RRP Rule under TSCA, the penalty for each violation under TSCA Section 16 shall be no more than \$25,000. Pursuant to the Debt Collection Improvement Act, the 2015 Civil Penalty Inflation Adjustment Act, and EPA’s Penalty Inflation Rule (40 C.F.R. Part 19), the maximum penalty for each such TSCA violation is \$39,873 for violations occurring after November 2, 2015, and for which penalty assessment is on or after February 6, 2019.

COUNT 2 - Failure to Adequately Cover the Ground with Plastic Sheeting

Provisions Violated: 40 C.F.R. § 745.89(d)(3) requires firms performing renovations to ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), for exterior renovations, firms must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater.

Circumstance Level: The failure to 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, results in a high probability that lead dust and debris will contaminate the ground surface and sediment. As a result, under the LBP Consolidated ERPP Appendix A, a violation of 40 C.F.R § 745. 85(a)(2)(ii)(C), is a *Level 2a* violation.

Extent of Harm: The LBP Consolidated ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living there. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. In this case, since there was no one under 18 years old known to be living in the affected units at the time of the violations, each violation warrants a *minor* extent factor under the RRP Penalty Policy.

Respondent failed to adequately 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, at the following target housing property:

Respondent	Work Site Address	Work Date	Children /Ages	Extent of Harm	Gravity-Based Penalty
ACM	99 Gates Street Portsmouth, NH	8/28/18	None	Minor	\$6,223

COUNT 3- Recordkeeping (Failure to Retain Records Demonstrating Compliance with RRP Rule)

Provision Violated: 40 C.F.R. § 745.86(a) and (b) requires firms performing renovations to establish and maintain records, and if requested, make available to EPA, all records necessary to demonstrate compliance with the RRP Rule for three years.

Circumstance Level: The failure to retain records demonstrating compliance with the RRP results in a *lesser probability* of impacting human health and the environment due to exposure to lead-based paint, lead dust, and debris. As a result, under Appendix A of the RRP Penalty Policy, violations of 40 C.F.R. § 745.86(a) and (b) have been assigned a *Level 6a* violation.

Extent of Harm: The RRP Penalty Policy takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living there. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. In this case, since there was no one under 18 years old known to be living in the affected units at the time of the violations, each violation warrants a *minor* extent factor under the RRP Penalty Policy.

Respondent failed to establish and retain records demonstrating compliance with the RRP Rule after conducting renovations at the 13 separate renovations described in Paragraph 22 of the complaint.

Respondent failed to maintain records demonstrating compliance with the RRP Rule after conducting renovations at the following target housing property:

Respondent	Work Site Address	Work Date	Children /Ages	Extent of Harm	Gravity-Based Penalty
ACM	99 Gates Street Portsmouth, NH	8/28/18	None	Minor	\$622

Total penalty for all RRP Rule violations: \$11,512.

Complaint and Notice of Opportunity for Hearing
ACM Group, Inc., TSCA-01-2019-0061

CERTIFICATE OF SERVICE

I hereby certify that the foregoing administrative Complaint and Notice of Opportunity for Hearing has been provided to the following persons on the date noted below:

Original and one copy,
hand-delivered to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA – Region 1
5 Post Office Square, Suite 100 (ORC 04-6)
Boston, Massachusetts 02109-3912

One copy (with the Part 22 Rules
and RRP Penalty Policy enclosed),
by First Class Mail, Return
Receipt Requested, to:

Robert Warren Lavalley III, President
ACM Group, Inc
50A Northwestern Drive Unit 10
Salem, New Hampshire 03079



Peter DeCambre, Sr. Enforcement Counsel
U.S. EPA Region 1
5 Post Office Square, Suite 100 (OES 04-3)
Boston, MA 02109-3912

Phone (dir.): (617) 918-1890

Fax: (617) 918-0890

E-mail: decambre.peter@epa.gov