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

BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
THE ASKINS DEVELOPMENT GROUP, LLC,	)	**Docket No.** TSCA-07-2019-0280
	)	
	)	
Respondent.	)	

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

In support of its Motion for Default Order, Complainant states as follows:

I. INTRODUCTION

A. Procedural History

The Complaint and Notice of Opportunity for Hearing ("Complaint") in this matter was filed on September 30, 2019. The Complaint alleges that Respondent, The Askins Development Group, LLC ("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 EPA firm certification (Count 1) and failed to ensure that the renovation was performed in accordance with the work practice standards contained in 40 C.F.R. § 745.85, and therefore in violation of 40 C.F.R. § 745.89(d)(3), on eight separate dates in February and March of 2016 (Counts 2, 3, 4, 5, 6, 7, 8, and 9), during Respondent's renovation of a property located at 3429 Missouri Avenue in St. Louis, Missouri. To date, Respondent has

not filed an answer nor any other response to the Complaint.

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 a renovation of target housing for compensation 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. Envtl. 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.* 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, 40 C.F.R. § 22.5(b)(1)(i), states:

> 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 these Consolidated Rules of Practice. Service shall be made personal, by certified mail with return receipt requests, or by any reliable commercial delivery service that provides written verification of delivery.

Rule 22.5(b)(1)(ii)(A) of the Consolidated Rules of Practice, 40 C.F.R. § 22.5(b)(1)(ii)(A), states:

> Where respondent is a domestic or foreign corporation, a partnership, or an unincorporated association which is subject to suit under a common name, 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.

In Missouri, the Missouri Limited Liability Company Act ("MLLCA") contemplates service of process on LLCs by requiring that each LLC have and continuously maintain the following:

> (1) A registered office which may be, but need not be, the same as a place of its business in this state;
>
> (2) A registered agent for service of any process, notice or demand required or permitted by law to be served upon the limited liability company, which agent may be either an individual, resident of this state, whose business office is identical with

> such registered office, or a domestic or foreign corporation authorized to do business in this state, and whose business office is identical with such registered office. Except as provided in this section and subdivision (5) of section 347.153, the secretary shall not be appointed as the resident agent for any limited liability company.

MO. REV. STAT. § 347.030.1(1)-(2) (1993). The MLLCA further makes clear that service upon a Missouri LLC's registered agent constitutes service on the LLC itself. Section 347.033.1 of the MLLCA states:

> The registered agent so appointed by a limited liability company shall be an agent of such limited liability company upon whom any process, notice or demand required or permitted by law to be served upon the limited liability company may be served, and which, when so served, shall be lawful personal service on the limited liability company.

MO. REV. STAT. § 347.033.1 (1993).

Under the Consolidated Rules of Practice, "[s]ervice 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).

B. Answer to the Complaint

Pursuant to 40 C.F.R. 22.15(a), a respondent must file an answer within 30 days after service of the complaint. "Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation." 40 C.F.R. 22.15(d).

C. 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 Missouri. Compl. ¶ 3. On October 25, 2006, pursuant to the MLLCA, MO. REV. STAT. § 347.037 (2013), Respondent filed Articles of Organization with the Missouri Secretary of State. Exh. A, *Articles of Organization* (Oct. 25, 2006). The Articles of Organization name Orlando Askins as the organizer of Respondent and, as required by the MLLCA, MO REV. STAT. § 347.030 (2013), name National Registered Agents Inc. ("NRAI") as the registered agent of Respondent. *Id*. The address for NRAI is listed in the Articles of Organization as 300-B East High Street, Jefferson City, Missouri 65101. *Id*. Also on October 25, 2006, the Missouri Secretary of State issued to Respondent a "Certificate of Organization" stating that the Articles

of Organization conformed to the MLLCA and declaring that Respondent is a limited liability company in Missouri. Exh. B, *Certificate of Organization* (Oct. 25, 2006).

On February 4, 2013, NRAI filed with the Missouri Secretary of State a document entitled "Statement of Change of Business Office Address and Registered Office Address of a Registered Agent of a Foreign or Domestic For Profit or Nonprofit Corporation or a Limited Liability Company" ("Change of Address Form"). Exh. C, *Change of Address Form* (Feb. 4, 2013). The Change of Address Form references Respondent as the business entity at issue and changes the address for Respondent's registered agent, NRAI, from its prior address of 300-B East High Street, Jefferson City, Missouri 65101, to its current address of 120 South Central Avenue, Clayton, Missouri 3105. *Id*.

On November 29, 2018, the EPA, Respondent, and Respondent's attorney participated in a conference call to discuss the violations and a potential resolution of the case. On November 30, 2018, the EPA e-mailed Respondent's counsel memorializing the discussions during the conference call and outlining the information Respondent needed to submit to the EPA by the end of December 2018 to demonstrate compliance, allow the EPA to evaluate Respondent's ability to pay and the effect a penalty would have on Respondent's ability to continue to do business, and otherwise progress toward settlement. Respondent's counsel replied to that e-mail on November 30, 2018 thanking EPA's counsel.

Despite EPA counsel's repeated attempts to engage Respondent's attorney thereafter (e.g., on February 4 and 13, 2019, and on March 1 and 7, 2019), Respondent failed to provide any of the information sought or initiate any other progress toward settlement. On April 17, 2019, EPA's counsel again emailed Respondent's counsel as to the status of the case and stating that EPA may file a complaint. To date, Respondent has not provided any of the information

sought in EPA's counsel's November 30, 2018 email, nor any response to EPA counsel's April 17, 2019 email.

On September 30, 2019, Complainant filed its Complaint with attachments.[1] On that same day, Complainant transmitted a file-stamped copy of the Complaint with attachments, by certified mail, return receipt requested, to Respondent's registered agent, NRAI, at the address provided in the Change of Address Form cited in Exh. C above. Exh. D, *Transmittal Letter of Complaint and Notice of Opportunity for Hearing* (Sept. 30, 2019). Moreover, on October 8, 2019, EPA's counsel emailed a courtesy copy of the Complaint with attachments to Respondent's counsel.

Thereafter, the return receipt, or "green card," attached to the transmittal letter was returned to EPA evidencing that the Complaint and attachments had been served on Respondent's registered agent on October 4, 2019. On November 12, 2019, pursuant to Consolidated Rule of Practice 22.5(b)(1)(iii), Complainant filed a Proof of Service of Complaint and Notice of Opportunity for Hearing ("Proof of Service"), attaching the "green card" signed by a representative of NRAI. Exh. E, *Proof of Service of Complaint*. On that same day, Complainant transmitted a copy of the Proof of Service, by certified mail, return receipt requested, to Respondent's registered agent, the NRAI, at the address provided in the Change of Address Form cited in Exh. C above. Exh. F, *Transmittal Letter of Proof of Service of Complaint and*

[1] In accordance with 40 C.F.R.§ 22.14(b), the Complaint was accompanied by a copy of the Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule and a full copy of 40 C.F.R. Part 22.

Notice of Opportunity for Hearing (Nov. 12, 2019). As such, on October 4, 2019, Respondent was properly served, through its registered agent, pursuant to the Consolidated Rules of Practice.

Despite having been properly served with the Complaint on October 4, 2019, 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, as required by Consolidated Rule of Practice 22.15(a), 40 C.F.R. § 22.15(a). Exh. G, *Declaration of Amy Gonzales*.

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

The Complaint, at paragraph 95, explained that Respondent could have resolved the proceeding by paying the proposed penalty in full instead of filing an answer to the Complaint. The Complaint, at paragraph 96, explained that Respondent was obligated to file a written answer to the Complaint, if it did not agree to pay the proposed penalty in lieu of filing an answer pursuant to paragraph 95. The Complaint, at paragraph 99, explained the consequences of Respondent failing to pay the proposed penalty, failing to file an answer, and default, under the Consolidated Rules of Practice.

Pursuant to 40 C.F.R. § 22.15(a), Respondent was required to provide a written statement to the Regional Hearing Clerk indicating Respondent intended to pay the proposed penalty, or file an answer to the Complaint, within 30 days of service of the Complaint, which occurred on October 4, 2019. Accordingly, Respondent's period to provide such statement or for timely filing an answer expired on or about November 4, 2019.

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. G. 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.

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

Pursuant to 40 C.F.R. § 22.15(d), by failing to admit, deny, or explain the material factual allegations contained in the Complaint, Respondent admits those allegations in the Complaint. Further, under 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 as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. Because default by a respondent constitutes an 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]."[2] 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. § 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 21 through 27 that Respondent was engaged in renovation activities at 3429 Missouri Avenue in St. Louis, Missouri, a residential property built in 1879 that is, therefore, "target housing" as defined by Section 401 of TSCA, 15 U.S.C. § 2681. Second, paragraph 25 of the Complaint alleges that Respondent's activities at such target housing, which included "extensive gutting of the interior and the disturbance of greater than six square feet of interior painted surfaces," constituted a regulated "renovation," as defined 40 C.F.R. § 745.83. Third, as alleged in paragraph 26, the renovation was a "renovation for compensation" under 40 C.F.R. § 745.82(a). Finally, paragraphs 19 and 20 state that Respondent is and was, at all times relevant to the Complaint, a Missouri 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

[2] "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.

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 20 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 paragraphs 21-25 that regulated renovation activities were documented by the EPA inspector, the City of St. Louis Lead Hazard Control Department inspector, and a neighbor at 3429 Missouri Avenue in St. Louis, Missouri from late February to the middle of March 2016. Additionally, paragraph 33 of the Complaint alleges that the City of

St. Louis inspector also documented that Respondent had not applied for or obtained certification from the EPA prior to performance of the renovation. To that end, prior to filing the Complaint, EPA confirmed that it had no record of Respondent applying for or obtaining certification from EPA pursuant to 40 C.F.R. § 745.89(a)(1) prior to performance of the renovation of the Property. Exh. I, *Declaration of Cassandra Mance*, at para. 16. As such, the Complaint alleges all elements necessary to establish Respondent's violation of 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).

b. Counts 2-9: Failure to Ensure Renovations Were Performed in Accordance with the Work Practices Standards in 40 C.F.R. § 745.85 on February 29, 2016 (Count 2), March 3, 2016 (Count 3), March 5, 2016 (Count 4), March 6, 2016 (Count 5), March 7, 2016 (Count 6), March 8, 2016 (Count 7), March 9, 2016 (Count 8), and March 15, 2016 (Count 9)

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. Counts 2-9 of the Complaint allege that Respondent violated 40 C.F.R. § 745.89(d)(3) on February 29, 2016 (Count 2), March 3, 2016 (Count 3), March 5, 2016 (Count 4), March 6, 2016 (Count 5), March 7, 2016 (Count 6), March 8, 2016 (Count 7), March 9, 2016 (Count 8), and March 15, 2016 (Count 9), by failing to ensure all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. The regulation at 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.

The Complaint alleges that Respondent violated 40 C.F.R. § 745.89(d)(3) by failing to ensure that the renovation was performed in accordance with the following work practice standards in 40 C.F.R. § 745.85 on one or more dates:

- 40 C.F.R. § 745.85(a)(2)(i)(C), which requires firms, before beginning a renovation, 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 area 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.

- 40 C.F.R. § 745.85(a)(4)(i), which requires firms 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.

- 40 C.F.R. § 745.85(a)(4)(ii), which requires firms to collect, at the conclusion of each work day, the waste and store it under containment, in an enclosure, or behind a barrier that prevents the release of dust and debris out of the work area and prevents access to dust and debris.

- 40 C.F.R. § 745.85(a)(1), which requires the posting of signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside the work area.

Count 2-Failure to Ensure Renovations Were Performed in Accordance with the Work Practices Standards in 40 C.F.R. § 745.85 on February 29, 2016

At Count 2, paragraph 38, the Complaint alleges that Respondent violated 40 C.F.R. § 745.85(a)(2)(i)(C), and therefore 40 C.F.R. § 745.89(d)(3), in that: "[t]he EPA investigation revealed that Respondent failed to close windows in the work area on February 29, 2016. Specifically, statements obtained from a neighbor demonstrate open windows in the work area."

At Count 2, paragraph 40, the Complaint alleges that Respondent violated 40 C.F.R. § 745.85(a)(4)(i), and therefore 40 C.F.R. § 745.89(d)(3), in that:

> [t]he EPA investigation revealed that Respondent, on February 29, 2016, failed to contain waste from renovation activities to prevent releases of dust and debris before waste was removed from the work area for storage or disposal. Specifically, statements obtained from a neighbor demonstrate releases of dust and debris from Respondent's renovation activities which migrated to an adjacent property, where a child or children resided.

Therefore, the Complaint alleges all elements necessary to establish Respondent's violations of 40 C.F.R. § 745.89(d)(3) on February 29, 2016.

Count 3-Failure to Ensure Renovations Were Performed in Accordance with the Work Practices Standards in 40 C.F.R. § 745.85 on March 3, 2016

At Count 3, paragraph 45, the Complaint alleges Respondent violated 40 C.F.R. § 745.85(a)(2)(i)(C), and therefore 40 C.F.R. § 745.89(d)(3), in that: "[t]he EPA investigation revealed that Respondent failed to close windows in the work area on March 3, 2016. Specifically, photographs taken by the City of St. Louis lead inspector on March 3, 2016 depict open windows in the work area."[3]

At Count 3, paragraph 47, the Complaint alleges Respondent violated 40 C.F.R. § 745.85(a)(4)(i), and therefore 40 C.F.R. § 745.89(d)(3), in that:

> [t]he EPA investigation revealed that Respondent, on March 3, 2016, failed to contain waste from renovation activities to prevent releases of dust and debris before waste was removed from the work area for storage or disposal. Specifically, the videos taken by a neighbor on March 3, 2016, depict releases of dust and debris from Respondent's renovation activities which migrated to an adjacent property, where a child or children resided.

Therefore, the Complaint alleges all elements necessary to establish Respondent's violation of 40 C.F.R. § 745.89(d)(3) on March 3, 2016.

Count 4-Failure to Ensure Renovations Were Performed in Accordance with the Work Practices Standards in 40 C.F.R. § 745.85 on March 5, 2016

At Count 4, paragraph 52, the Complaint alleges Respondent violated 40 C.F.R. § 745.85(a)(4)(i), and therefore 40 C.F.R. § 745.89(d)(3), in that:

> [t]he EPA investigation revealed that Respondent, on March 5, 2016, failed to contain waste from renovation activities to prevent releases of dust and debris before waste was removed from the work area for storage or disposal. Specifically, the video and photographs taken by a neighbor on March 5, 2016 depict releases of dust and debris from Respondent's renovation activities.

[3] Complainant has decided to withdraw from Count 3 this specific allegation that Respondent failed to close windows in the work area on March 3, 2016. Regardless, Count 3 still stands because of the remaining allegation in the Complaint at Count 3, paragraph 47, that Respondent violated 40 C.F.R. § 745.85(a)(4)(i), and therefore 40 C.F.R. § 745.89(d)(3), on March 3, 2016, by failing to contain waste.

Therefore, the Complaint alleges all elements necessary to establish Respondent's violation of 40 C.F.R. § 745.89(d)(3) on March 5, 2016.

Count 5-Failure to Ensure Renovations Were Performed in Accordance with the Work Practices Standards in 40 C.F.R. § 745.85 on March 6, 2016

At Count 5, paragraph 57, the Complaint alleges Respondent violated 40 C.F.R. § 745.85(a)(4)(i), and therefore 40 C.F.R. § 745.89(d)(3), in that:

> [t]he EPA investigation revealed that Respondent, on March 6, 2016, failed to contain waste from renovation activities to prevent releases of dust and debris before waste was removed from the work area for storage or disposal. Specifically, the videos taken by a neighbor on March 6, 2016, depict releases of dust and debris from Respondent's renovation activities which migrated to an adjacent property, where a child or children resided.

Therefore, the Complaint alleges all elements necessary to establish Respondent's violation of 40 C.F.R. § 745.89(d)(3) on March 6, 2016.

Count 6-Failure to Ensure Renovations Were Performed in Accordance with the Work Practices Standards in 40 C.F.R. § 745.85 on March 7, 2016

At Count 6, paragraph 62, the Complaint alleges Respondent violated 40 C.F.R. § 745.85(a)(4)(i), and therefore 40 C.F.R. § 745.89(d)(3), in that:

> [t]he EPA investigation revealed that Respondent, on March 7, 2016, failed to contain waste from renovation activities to prevent releases of dust and debris before waste was removed from the work area for storage or disposal. Specifically, photographs taken by the City of St. Louis lead inspector on March 7, 2016 depict uncontained waste from renovation activities. Further, samples of dust from the neighboring property taken by the City of St. Louis lead inspector on March 7, 2016 tested positive for lead.

At Count 6, paragraph 64, the Complaint alleges Respondent violated 40 C.F.R. § 745.85(a)(2)(i)(C), and therefore 40 C.F.R. § 745.89(d)(3), in that: "[t]he EPA investigation revealed that Respondent failed to close windows in the work area on March 7, 2016. Specifically, photographs taken by the City of St. Louis lead inspector on March 7, 2016 depict open windows in the work area."

Therefore, the Complaint alleges all elements necessary to establish Respondent's violations of 40 C.F.R. § 745.89(d)(3) on March 7, 2016.

Count 7-Failure to Ensure Renovations Were Performed in Accordance with the Work Practices Standards in 40 C.F.R. § 745.85 on March 8, 2016

At Count 7, paragraph 69, the Complaint alleges Respondent violated 40 C.F.R. § 745.85(a)(4)(i), and therefore 40 C.F.R. § 745.89(d)(3), in that:

> [t]he EPA investigation revealed that Respondent, on March 8, 2016, failed to contain waste from renovation activities to prevent releases of dust and debris before waste was removed from the work area for storage or disposal. Specifically, the videos taken by a neighbor on March 8, 2016, depict releases of dust and debris from Respondent's renovation activities which migrated to an adjacent property, where a child or children resided.

At Count 7, paragraph 71, the Complaint alleges Respondent violated 40 C.F.R. § 745.85(a)(2)(i)(C), and therefore 40 C.F.R. § 745.89(d)(3), in that: "[t]he EPA investigation revealed that Respondent failed to close windows in the work area on March 8, 2016. Specifically, the videos and photographs taken by a neighbor on March 8, 2016 depict open windows in the work area."

At Count 7, paragraph 73, the Complaint alleges Respondent violated 40 C.F.R. § 745.85(a)(4)(ii), and therefore 40 C.F.R. § 745.89(d)(3), in that:

> [t]he EPA investigation revealed that Respondent failed to collect, at the conclusion of the work day on March 8, 2016, the waste and store it under containment, in an enclosure, or behind a barrier that prevented the release of dust and debris out of the work area and prevented access to dust and debris. Specifically, photographs taken by the City of St. Louis lead inspector on the morning of March 9, 2016 depict uncontained waste in an open dumpster in the same location as that depicted in photographs taken by a neighbor on March 8, 2016.

Therefore, the Complaint alleges all elements necessary to establish Respondent's violation of 40 C.F.R. § 745.89(d)(3) on March 8, 2016.

Count 8-Failure to Ensure Renovations Were Performed in Accordance with the Work Practices Standards in 40 C.F.R. § 745.85 on March 9, 2016

At Count 8, paragraph 78, the Complaint alleges Respondent violated 40 C.F.R. § 745.85(a)(4)(i), and therefore 40 C.F.R. § 745.89(d)(3), in that:

> [t]he EPA investigation revealed that Respondent, on March 9, 2016, failed to contain waste from renovation activities to prevent releases of dust and debris before waste was removed from the work area for storage or disposal. Specifically, photographs taken by the City of St. Louis lead inspector on March 9, 2016 depict uncontained waste from renovation activities.

At Count 8, paragraph 80, the Complaint alleges Respondent violated 40 C.F.R. § 745.85(a)(2)(i)(C), and therefore 40 C.F.R. § 745.89(d)(3), in that "[t]he EPA investigation revealed that Respondent failed to close windows in the work area on March 9, 2016. Specifically, photographs taken by the City of St. Louis lead inspector on March 9, 2016 depict open windows in the work area."

Therefore, the Complaint alleges all elements necessary to establish Respondent's violation of 40 C.F.R. § 745.89(d)(3) on March 9, 2016.

Count 9-Failure to Ensure Renovations Were Performed in Accordance with the Work Practices Standards in 40 C.F.R. § 745.85 on March 15, 2016

At Count 9, paragraph 85, the Complaint alleges Respondent violated 40 C.F.R. § 745.85(a)(1), and therefore 40 C.F.R. § 745.89(d)(3), in that:

> [t]he EPA investigation revealed that Respondent, on March 15, 2016, failed to post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside the work area. Specifically, photographs taken by an EPA representative on March 15, 2016 depict the lack of signage.

At Count 9, paragraph 87, the Complaint alleges Respondent violated 40 C.F.R. § 745.85(a)(4)(i), and therefore 40 C.F.R. § 745.89(d)(3), in that:

> [t]he EPA investigation revealed that Respondent, on March 15, 2016, failed to contain waste from renovation activities to prevent releases of dust and debris

> before waste was removed from the work area for storage or disposal. Specifically, photographs taken by an EPA representative on March 15, 2016 depict uncontained waste from renovation activities.

Therefore, the Complaint alleges all elements necessary to establish Respondent's violation of 40 C.F.R. § 745.89(d)(3) on March 15, 2016.

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 a default order against Respondent is appropriate.

3. 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].[4] The Presiding Officer shall consider any civil penalty guidelines issued under the Act.

[4] *See* 40 C.F.R. § 22.3(a) (defining "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).

a. Statutory Civil Penalty Criteria

Section 16(a) of TSCA, 15 U.S.C. § 2615(a)(1), as amended in 2016, provides that any person who violates Section 409 of TSCA, 15 U.S.C. § 2689, shall be liable to the United States for a civil penalty of up to $37,500 for each such violation. 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 $39,873 for violations that occurred after November 2, 2015, where penalties were assessed on or after February 6, 2019. *Civil Monetary Penalty Inflation Adjustment Rule*, 84 Fed. Reg. 2056 (Feb. 6, 2019).[5] Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1) further provides that "[e]ach day such a violation continues shall, for the purposes of this subsection, constitute a separate violation of section 2614 or 2689 of this title." 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.

[5] The 2020 *Civil Monetary Penalty Inflation Adjustment Rule* provides a statutory maximum of $39,873 for violations that occurred after November 2, 2015, where penalties were assessed on or after February 6, 2019, but before January 13, 2020. 85 Fed. Reg. 1751 (January 13, 2020).

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"). The ERPP was revised on April 5, 2013. Exh. H. 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. *Id.* at p. 2. 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.*

Following the EPA's 1984 civil penalty guidance,[6] the ERPP provides a three-part framework for calculating appropriate civil penalty amounts. *Id.* at p. 8. First, enforcement personnel determine the number of independently assessable violations. *Id.* Second, enforcement personnel determine the economic benefit the respondent realized from non-compliance. *Id.* Third, enforcement personnel then determine the gravity-based penalty, which "refers to the overall seriousness of the violation." *Id.* at p. 9. In determining the gravity-based penalty, there are two stages. *Id.*

The first stage considers the nature of the violation, the circumstances of the violation, and the extent of harm that may result from a given violation. *Id.* The second stage consists of enforcement personnel determining whether upward or downward adjustments to the gravity-based penalty are warranted based on the violator's ability to pay/ability to continue in

[6] *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).

business; the violator's history of prior such violations; the violator's degree of culpability; and such other matters as justice may require. *Id.* In such manner, the ERPP guides consideration of the statutory factors set forth at Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).

c. Penalty Calculation

Complainant hereby submits Exhibit I, the Declaration of Cassandra Mance, the case review officer in this case, which provides a detailed description of her work in this matter, including the civil penalty calculation proposed in the Complaint and this Motion. Ms. Mance's job description, qualifications, training, and experience working on lead-based paint matters is also summarized in her Declaration. Exh. I, at paras. 1-4.

i. Preliminary Penalty Amount

The Number of Independently Assessable Violations

Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1) and the ERPP provide that a separate civil penalty, up to the statutory maximum, can be assessed for each independent violation of TSCA. Exh. H, at p. 10. Section 16(a)(1) provides that [e]ach day such violation continues shall, for the purposes of this subsection, constitute a separate violation of Section 2614 or 2689 of this title." 15 U.S.C. § 2615(a)(1). Per the ERPP, "[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." *Id.* In this case, Complainant determined that Respondent committed nine independent violations of TSCA. Exh. I, at para. 7.

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."

Exh. H, at pp. 11-12. Because Complainant has determined that the economic benefit resulting to Respondent was less than $50 per room renovated 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. Exh. I, at paras. 55-56.

Gravity-Based Penalty

The "gravity-based" component of a civil penalty is calculated to reflect the seriousness of a violation. Exh. H, at p. 9. 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.[7] 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.* The "nature" of a violation refers to the "essential character of the violation," specifically whether the regulatory provision violated is "hazard assessment"[8] or "chemical control"[9] in nature. *Id.*, at p. 14. The "circumstance" of a violation, on the other hand, represents "the probability of harm resulting from a particular

[7] *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.").

[8] 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. H, at p. 14.

[9] 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. H, at p. 14.

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. *Id.* at Appendix B. 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. *Id.* at Appendix A. 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.[10] 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." *Id*. at pp. 14-16; Appendices A and B.

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/abatements. *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

[10] The "circumstance" level "High" encompasses Levels 1 and 2; "Medium" corresponds to Levels 3 and 4; and "Low" captures Levels 5 and 6. Exh. H, at pp. 15-16.

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. *Id.*

In this case, pursuant to the ERPP, all violations alleged in the Complaint were assigned an "extent" category of "Minor" because no individuals younger than 18 resided in the Property at the time of the renovation. Compl. at ¶ 28; Exh. I, at paras. 18, 22, 26, 30, 34, 38, 42, 46, and 50. Further, because each regulatory requirement alleged to have been violated in this matter is "chemical control" in nature, the violation of which poses a medium probability of impacting human health and the environments, the Circumstance Level for each violation, pursuant to the ERPP, is 3a. Exh. H, at p. A-3 (Section VII); Exh. I, at paras. 17, 21, 25, 29, 33, 37, 41, 45, and 49.[11]

For violations of a minor extent and circumstance level of 3a, Appendix B of the ERPP

[11] As explained in Exh. I, at para. 21, and FN 15, Appendix A of the ERPP does not specifically assign a circumstance level for violations of 40 C.F.R. § 745.89(d)(3). However, Appendix A of the ERPP does assign a circumstance level of 3a for the 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). Exh. H, p. A-3 (Section VII). Likewise, Appendix A of the ERPP assigns a circumstance level of 3a for the 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). *Id*. To that end, the EPA's Office of Enforcement and Compliance Assurance, Office of Civil Enforcement has instructed RRP practitioners that violations of 40 C.F.R. § 745.89(d)(3), like violations of 40 C.F.R. §§ 745.89(d)(1) and (2), should be assigned a circumstance level of 3a. In this case, the assignment of a circumstance level of 3a to violations of 40 C.F.R. § 745.89(d)(3) is to Respondent's benefit. For Counts 2-9, EPA could have simply alleged work practice violations of 40 C.F.R. § 745.85, which carry a higher circumstance of 2a (Exh. H, pp. A-5-A-6), and therefore higher penalties under the ERPP (Exh. H, p. B-2). For example, Appendix B of the ERPP assigns a level 3a violation, with a minor extent, a penalty of $4,500 before inflation. In contrast, Appendix B of the ERPP assigns a level 2a violation, with a minor extent, a penalty of $6,000 before inflation.

assigns the following gravity-based penalty amounts for each alleged violation:

Count	Preliminary Gravity-Based Penalty
1	$4,500
2	$4,500
3	$4,500
4	$4,500
5	$4,500
6	$4,500
7	$4,500
8	$4,500
9	$4,500
TOTAL	**$40,500**

Pursuant to the January 11, 2018 Memorandum entitled "Amendments to the EPA's Civil Policies to Account for Inflation (effective January 15, 2018) and transmittal of the 2018 Civil Monetary Inflation Adjustment Rule,"[12] because the alleged TSCA Lead-Based Paint violations occurred after November 2, 2015, and penalties were assessed after January 15, 2018, Complainant is required to apply an inflation multiplier of 1.03711 to the total penalty. *Civil Monetary Penalty Inflation Adjustment Rule*, 83 Fed. Reg. 1190 (Jan. 10, 2018); Exh. I, at para. 58. The resulting penalty with inflation, rounded to the nearest dollar,[13] is $42,003 ($40,500 X 1.03711). *Id.*

[12] At the time the complaint was filed, this was the policy in effect. https://www.epa.gov/sites/production/files/2020-12/documents/amendmentstotheepascivilpenaltypoliciestoaccountforinflation011518.pdf (last visited on February 13, 2021).

[13] The 2018 Civil Monetary Inflation Adjustment rule states that:

> "[The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015] requires agencies to: (1) Adjust the level of statutory civil penalties with an initial ''catch-up'' adjustment through an interim final rulemaking; and (2) beginning January 15, 2017, make subsequent annual adjustments for inflation. The purpose of the 2015 Act is to maintain the deterrent effect of civil penalties by translating originally enacted statutory civil penalty amounts to today's dollars **and rounding statutory civil penalties to the nearest dollar.**"
>
> Fed. Reg. 1191 (Jan. 10, 2018) (emphasis added).

ii. Adjustment Factors

In accordance with TSCA's civil penalty criteria, the ERPP provides a number of factors that enforcement personnel may consider modifying 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 negotiations, and any other case-specific facts that justify further reduction of the penalty. Exh. H, at pp. 17-24.

Consistent with TSCA and the ERPP, Complainant considered whether any upward or downward adjustments to the total gravity-based penalty were appropriate. Exh. I, at para. 52. Despite numerous efforts by Complainant to reach Respondent, Respondent did not engage EPA after the lone initial prefiling conference on November 29, 2018, nor after the filing of the Complaint. *Id*. at para. 53. Respondent never provided EPA any of the financial documentation it requested. *Id*. Therefore, Complainant had inadequate information 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. *Id*. Complainant further determined that no upward adjustment to the penalty was appropriate because Respondent had no history of prior such violations or an enhanced degree of culpability. *Id*. at para. 54. 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.

iii. Final Civil 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 $42,003. *Id*. at

paras. 57-59. 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 $42,003 civil penalty against Respondent.

Respectfully submitted,

PETER BIERI

Digitally signed by PETER BIERI
Date: 2021.02.18 12:28:31 -06'00'

Dated:_____

Britt Bieri
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7
Attorney for Complainant

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Memorandum of Points and Authorities in Support of Complainant's Motion for Default Order (with Exhibits A through I) was sent electronically on February 18, 2021 to the Regional Hearing Clerk of the U.S. Environmental Protection Agency, Region 7, at R7_Hearing_Clerk_Filings@epa.gov.

A true and correct copy of the foregoing document was also sent by certified mail, return receipt requested, on February 18, 2021 to:

National Registered Agents, Inc.
120 South Central Avenue, Suite 400
Clayton, Missouri 63105
Registered Agent for The Askins Development Group, LLC

A true and correct copy of the foregoing document was also sent by certified mail, return receipt requested, and by e-mail, on February 18, 2021 to:

Dan J. Kazanas
Kazanas LC
321 West Port Plaza Drive, Suite 201
Saint Louis, Missouri 63146
[redacted]
Attorney for The Askins Development Group, LLC

and

The Askins Development Group, LLC
5753-G East Santa Ana Canyon Road #602
Anaheim Hills, California 92807
[redacted]
Respondent

PETER BIERI
Digitally signed by PETER BIERI
Date: 2021.02.18 12:28:49 -06'00'

Britt Bieri
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7
Attorney for Complainant