

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

BEFORE THE ADMINISTRATOR

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

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,
DEFAULT ORDER, AND INITIAL DECISION**

In support of its Motion for Default Order, Complainant, the Director of the Enforcement and Compliance Assurance Division, EPA Region 7, respectfully proposes the following Findings of Fact, Conclusions of Law, Default Order, and Initial Decision:

I. PROPOSED FINDINGS OF FACT

1. Pursuant to Sections 402(a), 402(c)(3), 406(b), and 407 of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2682(a), 2682(c)(3), 2686(b) and 2687, the EPA promulgated regulations at 40 C.F.R. Part 745, Subparts E and L, establishing requirements for the training and certification of individuals and contractors engaged in lead-based paint activities, including renovation of residences built prior to 1978, and for performance of renovations on pre-1978 housing (“Renovation, Repair, and Painting Rule”).

2. 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.”

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

4. The preamble to the Renovation, Repair, and Painting Rule states 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).

5. With exceptions not relevant to this initial decision, Section 401(17) of TSCA, 15 U.S.C. § 2681(17), defines “target housing” as any housing constructed prior to 1978.

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

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

firms that perform renovations for compensation to apply to EPA for certification to perform renovations or dust sampling.

8. 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.

9. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85, including:

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

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

11. The regulation at 40 C.F.R. § 745.87(d) provides that violators may be subject to civil sanctions pursuant to Section 16 of TSCA, 15 U.S.C. § 2615. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides that any person who violates Section 409 of TSCA, 15 U.S.C. § 2689, shall be liable to the United States for a civil penalty of up to \$37,500 for each such violation. Each day that such a violation continues constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. § 2689. The Federal Civil Penalties Inflation Adjustment Act 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, but before January 13, 2020.

12. The regulation at 40 C.F.R. § 745.83 defines “person,” in pertinent part, as any natural or judicial person including any individual, corporation, partnership, or association.

13. The regulation at 40 C.F.R. § 22.5(b)(1)(i), provides, in relevant part, that “Complainant shall serve on respondent, or a representative authorized to receive service on respondent’s behalf, a copy of the signed original of the complaint, together with a copy of [the Consolidated Rules of Practice] . . . by any reliable commercial delivery service that provides written verification of delivery. . . .” When the respondent is “a domestic or foreign corporation, a partnership, or an unincorporated association which is subject to suit under a common name,” the regulation at 40 C.F.R. § 22.5(b)(1)(ii)(A) states that the “complainant shall serve an officer, partner, a managing or general agent, or any other person authorized by appointment or by

Federal or State law to receive service of process.” “Service of the complaint is complete when the return receipt is signed.” 40 C.F.R. § 22.7(c). “Proof of service of the complaint shall be made by . . . properly executed receipt . . . filed with the Regional Hearing Clerk immediately upon completion of service.” 40 C.F.R. § 22.5(b)(1)(iii).

14. The regulation at 40 C.F.R. § 22.17(a) provides that a party may be found to be in default, after motion, upon failure to file a timely answer to the complaint. Pursuant to 40 C.F.R. § 22.15(a), any such answer to the complaint must be filed with the Regional Hearing Clerk within 30 days after service of the complaint. “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). Accordingly, pursuant to 40 C.F.R. § 22.17(c), 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.” 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.*

15. Respondent is The Askins Development Group, LLC, a limited liability company operating under the laws of the state of Missouri. Respondent’s Articles of Organization name National Registered Agents Inc. as the company’s resident agent, and the address provided for Respondent’s registered agent is listed on the 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, filed with the Missouri Secretary of State on February 4, 2013, as 120 South Central Avenue, Clayton, Missouri 63105. Orlando Askins is listed on the Articles of Organization as the organizer of The Askins Development Group, LLC.

16. On or before February 28, 2016, through at least March 15, 2016, Respondent was

engaged in a renovation of the property located at 3429 Missouri Avenue in St. Louis, Missouri (“the Property”), that included extensive renovation of the interior and the disturbance of greater than six square feet of interior painted surfaces.

17. The Property was built in 1879.

18. The Property was not occupied by adults at the time of the renovation, and children less than eighteen years of age neither occupied nor were present at the Property at the time of Respondent’s renovation.

19. Respondent’s renovation of the Property was a renovation for compensation.

20. In early March of 2016, pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, representatives of the EPA conducted an investigation regarding renovation activities at the Property to evaluate Respondent’s compliance with TSCA and the requirements of the Renovation, Repair, and Painting Rule.

21. Also in early March of 2016, the City of St. Louis Lead Hazard Control Department commenced an investigation into the renovation activities at the Property. The City of St. Louis Lead Inspector visited the Property and the surrounding area on multiple occasions between March 3 and March 9, 2016. He took photographs on March 3, 4, 7, and 9, 2016 and took soil and dust samples from a neighboring property on March 7, 2016. The City of St. Louis shared the results of its investigation with the EPA. On March 15, 2016, an EPA inspector visited the Property, took photographs, and also collected neighbor statement, photographs, videos, voicemail recording, and documents from a neighbor of the Property. (The EPA and City of St. Louis investigations are collectively referred to as the “EPA investigation”).

22. The EPA investigation revealed that Respondent had not applied for or obtained certification from the EPA to perform renovations prior to performing the renovation on the

Property. Furthermore, the renovation did not qualify for one of the exceptions identified in 40 C.F.R. § 745.82.

23. The EPA investigation revealed that Respondent failed to ensure that the renovations performed at the Property on February 29, 2016, were in accordance with the work practice standards in 40 C.F.R. § 745.85. Specifically, the EPA investigation revealed that Respondent failed to close windows in the work area and 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.

24. The EPA investigation revealed that Respondent failed to ensure that the renovations performed at the Property on March 3, 2016, were in accordance with the work practice standards in 40 C.F.R. § 745.85. Specifically, the EPA investigation revealed that Respondent 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.

25. The EPA investigation revealed that Respondent failed to ensure that the renovations performed at the Property on March 5, 2016, were in accordance with the work practice standards in 40 C.F.R. § 745.85. Specifically, the EPA investigation revealed that Respondent 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.

26. The EPA investigation revealed that Respondent failed to ensure that the renovations performed at the Property on March 6, 2016, were in accordance with the work practice standards in 40 C.F.R. § 745.85. Specifically, the EPA investigation revealed that Respondent 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.

27. The EPA investigation revealed that Respondent failed to ensure that the renovations performed at the Property on March 7, 2016, were in accordance with the work practice standards in 40 C.F.R. § 745.85. Specifically, the EPA investigation revealed that Respondent 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 and failed to close windows in the work area.

28. The EPA investigation revealed that Respondent failed to ensure that the renovations performed at the Property on March 8, 2016, were in accordance with the work practice standards in 40 C.F.R. § 745.85. Specifically, the EPA investigation revealed that Respondent 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, failed to close windows in the work area, and failed to collect, at the conclusion of the work day, 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.

29. The EPA investigation revealed that Respondent failed to ensure that the renovations performed at the Property on March 9, 2016, were in accordance with the work practice standards in 40 C.F.R. § 745.85. Specifically, the EPA investigation revealed that Respondent 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 and failed to close windows in the work area.

30. The EPA investigation revealed that Respondent failed to ensure that the renovations performed at the Property on March 15, 2016, were in accordance with the work practice standards in 40 C.F.R. § 745.85. Specifically, the EPA investigation revealed that Respondent 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 and 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.

31. The Complaint in this matter was filed by Complainant and transmitted to Respondent's registered agent on September 30, 2019, via certified mail. The Complaint was addressed to National Registered Agent, Inc., Registered Agent for The Askins Development Group, LLC, at the address listed on the 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, filed with the Missouri Secretary of State on February 4, 2013, 120 South Central Avenue, Clayton, Missouri 63105. Respondent's registered agent received the Complaint on October 2, 2019, as evidenced by the certified mail "green card."

32. As proof of service, Complainant filed a copy of the return receipt with the Regional Hearing Clerk on November 12, 2019. On that same day, Complainant transmitted a copy of the proof of service to Respondent's agent via certified mail, return receipt requested.

33. To date, Respondent has failed to file an answer or submit any response or correspondence concerning this matter to the Regional Hearing Clerk or any other representative of EPA Region 7.

II. PROPOSED CONCLUSIONS OF LAW

19. Respondent is a "firm" and "person" as defined by 40 C.F.R. § 745.83.

20. Respondent's renovation activities at the Property constituted a "renovation" as defined by 40 C.F.R. § 745.83.

21. Respondent's renovation of the Property was performed for compensation per 40 C.F.R. § 745.82(a).

22. The Property is "target housing" as defined by Section 401(17) of TSCA, 15 U.S.C.

§ 2681(17).

23. The Renovation, Repair, and Painting Rule is applicable to the renovation that Respondent performed on the Property.

24. Respondent's failure to apply to the EPA for certification pursuant to 40 C.F.R. § 745.89(a)(1) prior to performance of the renovation on the Property is a violation of 40 C.F.R. § 745.81(a)(2)(ii).

25. Respondent's failure to ensure that the renovations performed at the Property on February 29, 2016, were in accordance with the work practice standards in 40 C.F.R. § 745.85, specifically by failing to close windows in the work area, as required by 40 C.F.R. § 745(a)(2)(i)(C) and failing to contain waste from renovation activities to prevent releases of dust and debris before waste is removed from the work area for disposal, as required by 40 C.F.R. § 745.85(a)(4)(i), is a violation of 40 C.F.R. § 745.89(d)(3).

26. Respondent's failure to ensure that the renovations performed at the Property on March 3, 2016, were in accordance with the work practice standards in 40 C.F.R. § 745.85, specifically by failing to contain waste from renovation activities to prevent releases of dust and debris before waste is removed from the work area for disposal, as required by 40 C.F.R. § 745.85(a)(4)(i), is a violation of 40 C.F.R. § 745.89(d)(3).

27. Respondent's failure to ensure that the renovations performed at the Property on March 5, 2016 were in accordance with the work practice standards in 40 C.F.R. § 745.85, specifically by failing to contain waste from renovation activities to prevent releases of dust and debris before waste is removed from the work area for disposal, as required by 40 C.F.R. § 745.85(a)(4)(i), is a violation of 40 C.F.R. § 745.89(d)(3).

28. Respondent's failure to ensure that the renovations performed at the Property on

March 6, 2016, were in accordance with the work practice standards in 40 C.F.R. § 745.85, specifically by failing to contain waste from renovation activities to prevent releases of dust and debris before waste is removed from the work area for disposal, as required by 40 C.F.R. § 745.85(a)(4)(i), is a violation of 40 C.F.R. § 745.89(d)(3).

29. Respondent's failure to ensure that the renovations performed at the Property on March 7, 2016, were in accordance with the work practice standards in 40 C.F.R. § 745.85, specifically by failing to close windows in the work area, as required by 40 C.F.R. § 745.85(a)(2)(i)(C), and failing to contain waste from renovation activities to prevent releases of dust and debris before waste is removed from the work area for disposal, as required by 40 C.F.R. § 745.85(a)(4)(i), is a violation of 40 C.F.R. § 745.89(d)(3).

30. Respondent's failure to ensure that the renovations performed at the Property on March 8, 2016, were in accordance with the work practice standards in 40 C.F.R. § 745.85, specifically by failing to close windows in the work area, as required by 40 C.F.R. § 745.85(a)(2)(i)(C), failing to contain waste from renovation activities to prevent releases of dust and debris before waste is removed from the work area for disposal, as required by 40 C.F.R. § 745.85(a)(4)(i), and failing to collect, at the conclusion of the workday, 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, as required by 40 C.F.R. § 745.85(a)(4)(ii), is a violation of 40 C.F.R. § 745.89(d)(3).

31. Respondent's failure to ensure that the renovations performed at the Property on March 9, 2016, were in accordance with the work practice standards in 40 C.F.R. § 745.85, specifically by failing to close windows in the work area, as required by 40 C.F.R. § 745.85(a)(2)(i)(C), and failing to contain waste from renovation activities to prevent releases of

dust and debris before waste is removed from the work area for disposal, as required by 40 C.F.R. § 745.85(a)(4)(i), is a violation of 40 C.F.R. § 745.89(d)(3).

32. Respondent's failure to ensure that the renovations performed at the Property on March 15, 2016, were in accordance with the work practice standards in 40 C.F.R. § 745.85, specifically by failing 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, as required by 40 C.F.R. § 745.85(a)(1), and failing to contain waste from renovation activities to prevent releases of dust and debris before waste is removed from the work area for disposal, as required by 40 C.F.R. § 745.85(a)(4)(i), is a violation of 40 C.F.R. § 745.89(d)(3).

33. Pursuant to 40 C.F.R. § 745.87(a), Respondent's violations of the Renovation, Repair, and Painting Rule are violations of Section 409 of TSCA, 15 U.S.C. § 2689.

34. The Complaint in this matter was filed on September 30, 2019.

35. The Complaint in this matter was lawfully and properly served by Complainant on Respondent, through its registered agent, in accordance with the Consolidated Rules of Practice, on October 4, 2019.

36. Pursuant to 40 C.F.R. § 22.15(a), Respondent was required to file an answer to the Complaint within 30 days of service of the Complaint.

37. Complainant's Motion for Default Order was lawfully and properly served on Respondent via certified mail, return receipt requested, on February 18, 2021, in accordance with 40 C.F.R. § 22.7(c).

38. Pursuant to 40 C.F.R. §§ 22.7(c) and 22.16(b), Respondent was required to file a response to Complainant's Motion for Default Order within 15 days of service. Pursuant to

40 C.F.R. § 22.16(b), Respondent's failure to respond to the motion within the designated period is deemed to be a waiver of any objection to the granting of the motion.

39. Upon Complainant's present motion, Respondent may be found in default for failure to file a timely answer to the Complaint.

40. Respondent's default constitutes an admission by Respondent of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations.

41. The Complaint establishes a prima facie case of liability for violations of Section 409 of TSCA, 15 U.S.C. § 2689, that are alleged in Counts 1, 2, 3, 4, 5, 6, 7, 8, and 9 therein.

42. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), Respondent is liable to the United States for a civil penalty of up to \$39,873 for each such violation, as adjusted for inflation.

43. The relief requested in Complainant's Motion for Default Order is consistent with the record of the proceeding, TSCA, and the EPA's civil penalty guidelines.

III. PROPOSED DEFAULT ORDER & INITIAL DECISION

44. Complainant's Motion for a Default Order is hereby GRANTED.

45. Respondent is hereby found in DEFAULT.

46. Respondent is hereby ORDERED to pay a civil penalty in the amount of Forty-Two Thousand Three Dollars (\$42,003) for the TSCA violations alleged in the Complaint.

47. This Default Order resolves all outstanding issues and claims in the proceeding and, in accordance with 40 C.F.R. § 22.17(c), constitutes the Initial Decision under the Consolidated Rules of Practice. Pursuant to 40 C.F.R. § 22.27(c), this Default Order and Initial Decision shall become a Final Order forty-five (45) days after its service upon the parties unless Respondent

moves to reopen the hearing; Respondent appeals the Initial Decision to the Environmental Appeals Board within 30 days after the Initial Decision is served; Respondent moves to set aside the Default Order that constitutes the Initial Decision; or the Environmental Appeals Board elects to review the initial decision on its own initiative.

48. Within 30 days of this Initial Decision becoming a Final Order pursuant to 40 C.F.R. § 22.27(c), Respondent shall pay the full amount of the civil penalty assessment by sending a cashier's check or certified check to the payee specified in the Complaint, unless otherwise instructed by Complainant. The check shall note the case title and docket number, and Respondent shall serve copies of the check or other instrument of payment on Complainant and the Regional Hearing Clerk as instructed in the Complaint.

Respectfully submitted,

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 Proposed Findings of Fact, Conclusions of Law, Default Order, and Initial Decision 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

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