



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

September 30, 2019

BY HAND

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

RECEIVED
SEP 30 2019
EPA ORC
Office of Regional Hearing Clerk

Re: *In the matter of David Bean, Docket No. TSCA-01-2019-0052*

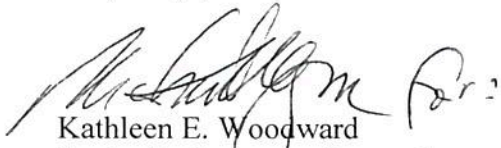
Dear Ms. Santiago:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Administrative Complaint and Notice of Opportunity for Hearing; and
2. Certificate of Service.

Kindly file the documents in the usual manner. Thanks very much for your help.

Very truly yours,


Kathleen E. Woodward
Senior Enforcement Counsel

Enclosures

cc: David Bean
Jordan Alves, EPA Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:)
)
David Bean)
1129 Johnston Drive)
Watchung, NJ 07069)
)
Respondent)
)
)
)
Proceeding under Section 16(a) of the)
Toxic Substances Control Act,)
15 U.S.C. § 2615(a))
_____)

**Docket No.
TSCA-01-2019-0052**

**COMPLAINT AND
NOTICE OF
OPPORTUNITY FOR
HEARING**

RECEIVED
SEP 30 2019
EPA ORC
Office of Regional Hearing Clerk

COMPLAINT

I. STATUTORY AND REGULATORY BACKGROUND

1. This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), regulations implementing TSCA at 40 C.F.R. § 745.118, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (“EPA” or “Complainant”), Region 1.

2. Respondent, David Bean (“Respondent”), is hereby notified of Complainant’s determination that Respondent has violated Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. § 4851 *et seq.*, and the federal regulations promulgated

thereunder, entitled “Residential Property Renovation,” as set forth at 40 C.F.R. Part 745, Subpart E (the “Renovation, Repair, and Painting Rule” or “RRP Rule”), and “Disclosure of Known Lead Based Paint and/or Lead Based Paint Hazards Upon Sale or Lease of Residential Property,” as set forth at 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”). Complainant seeks civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides that violations of Section 409 of TSCA are subject to the assessment by Complainant of civil and/or criminal penalties.

3. In 1992, Congress passed the Act in response to findings that low-level lead poisoning is widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint, and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. One of the stated purposes of the Act is to ensure that the existence of lead-based paint hazards is taken into account during the renovation of homes and apartments. To carry out this purpose, the Act added a new title to TSCA entitled “Title IV-Lead Exposure Reduction,” which currently includes Sections 401-411 of TSCA, 15 U.S.C. §§ 2681-2692.

4. In 1996, EPA promulgated regulations to implement Section 1018 of the Act (*Disclosure of Information Concerning Lead upon Transfer of Residential Property*), 42 U.S.C. § 4852d, and Section 402(a) of TSCA (*Lead-Based Paint Activities Training and Certification – Regulations*), 15 U.S.C. § 2682(a). The regulations under Section 1018 of the Act are set forth at 40 C.F.R. Part 745, Subpart F (the “Disclosure Rule”), and the regulations under TSCA Section 402(a) are set forth at 40 C.F.R. Part 745, Subpart L (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 (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 (collectively, the PRE Rule and the LBP Activities Rule are referred to herein as the “Renovation, Repair and Painting Rule” or “RRP Rule”).

6. Pursuant to TSCA Section 401(17), 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, and 40 C.F.R. § 745.83, the housing stock addressed by the Act, the Disclosure Rule, and the RRP Rule is “target housing,” defined as any housing constructed prior to 1978, excepting housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than six years of age resides or is expected to reside in such housing).

7. The Disclosure Rule, in pertinent part, requires lessors of target housing to do the following before a lessee is obligated under a lease contract:

- i. Provide to lessees an EPA-approved lead hazard information pamphlet;
- ii. Ensure that the contract to lease includes a Lead Warning Statement;

- iii. Ensure that the contract to lease includes a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards, or indicating no knowledge thereof;
- iv. Ensure that the contract to lease includes a list of available records or reports pertaining to lead-based paint and/or lead-based paint hazards or, otherwise, indicates no such records or reports are available; and
- v. Ensure that the contract to lease includes a statement by the lessee affirming receipt of the information set out in §§ 745.113(b)(2) and (b)(3) and the lead hazard information pamphlet.

See 40 C.F.R. §§ 745.100, 745.103, 745.107(a)(1), (a)(2), (a)(4), and 745.113(b)(1)-(6).

8. For purposes of complying with the Act and the Disclosure Rule, pursuant to 40 C.F.R. § 745.107(a)(1), the term “pamphlet” as used herein means the EPA-approved lead hazard information pamphlet developed under Section 406(a) of TSCA, entitled “*Protect Your Family From Lead in Your Home*” (EPA # 747-K-94-001), or an equivalent pamphlet that has been approved for use in the State of New Hampshire.

9. Pursuant to Section 1018(b)(5) of the Act, 42 U.S.C. § 4852d(b)(5), and 40 C.F.R. § 745.118(e), failure to comply with any requirements of the Disclosure Rule is a violation of TSCA Section 409, 15 U.S.C. § 2689. Section 1018(b)(5) of the Act also provides that, for each such violation of TSCA Section 409, specific civil penalties apply under TSCA Section 16.

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

11. 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.

12. Pursuant to Section 401(14) of TSCA, 15 U.S.C. § 2681(14), 40 C.F.R. § 745.103, and 40 C.F.R. § 745.83, 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.

13. For purposes of complying with Section 406(b) of TSCA and the RRP Rule, pursuant to 40 C.F.R. § 745.83, the term “pamphlet” as used herein means the EPA-approved pamphlet developed under TSCA Section 406(a), entitled “*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*” (EPA # 740-K-10-001), or any State or Tribal pamphlet developed for the same purpose and approved by EPA under 40 C.F.R. § 745.326.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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 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; and,
- iv. Retain all records necessary to demonstrate compliance with the same for three years.

See 40 C.F.R. §§ 745.81(a)(2), 745.84(a)(2), 745.89(d)(1)-(2), and 745.86(a) and (b).

19. 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 Disclosure Rule or the RRP Rule). Pursuant to 40 C.F.R. § 745.87(a), the failure to comply with a requirement of the RRP Rule is a violation of Section 409 of TSCA. Pursuant to 40 C.F.R. § 745.87(b), the failure to establish and maintain the records required by the RRP Rule is a violation of Sections 15 and 409 of TSCA.

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

21. Section 16(a) of TSCA, 40 C.F.R. § 745.87(d), and 40 C.F.R. § 745.235(e) authorize the assessment of a civil penalty of up to \$25,000 per violation per day of the RRP Rule. Under the Debt Collection Improvement Act and 40 C.F.R. Part 19, violations that occurred after January 12, 2009, are subject to penalties of up to \$37,500 per violation per day. *See* 78 Fed. Reg. 66643, 66647. Under the 2015 Civil Penalty Inflation Adjustment Act and 40 C.F.R. Part 19.4, the statutory maximum penalty for

violations that occurred after November 2, 2015 and for which the penalty is assessed after February 6, 2019, is \$39,873.

22. Section 16(a) of TSCA, 1018(b)(5) of the Act and 40 C.F.R. § 745.118(f) authorize the assessment of a civil penalty of \$10,000 per violation of the Disclosure Rule under TSCA, the penalty for each violation shall be no more than \$10,000. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, 40 C.F.R. Part 19, and the Civil Penalty Inflation Adjustment Act of 2015, violations that occurred on or after November 2, 2015, and for which penalties are assessed after February 6, 2019, are subject to penalties of up to \$17,834 per violation. *See* 84 Fed. Reg. 2058 (Feb. 6, 2019).

II. GENERAL ALLEGATIONS

23. Respondent is an individual.

24. Respondent is the sole principal and owner of his residential rental, property management, and renovation business.

25. At all times relevant to the RRP Rule violations alleged in this Complaint, Respondent was a “firm,” as defined in 40 C.F.R. § 745.83.

26. Respondent owns and manages six rental income properties located in and around Keene and Hinsdale, New Hampshire.

27. Respondent conducts his business from his New Jersey address and from an apartment located at 41 Park Avenue, Keene, New Hampshire.

28. At all times relevant to this Complaint, Respondent performed renovations of residential units, and was, thus, a “renovator” as defined at 40 C.F.R. § 746.83.

29. Respondent was not certified as an individual renovator nor is his firm certified under the RRP Rule.

30. At all times relevant to the RRP Rule violations alleged in this Complaint, Respondent hired one of his tenants, Michael Parker, to do exterior renovation work at 41 Park Avenue, Keene, New Hampshire (“41 Park Avenue”). Michael Parker was previously lead abatement certified, but not RRP certified, by the State of New Hampshire (DES-issued firm certificate # LAS-TP-000010-15-0037; expired October 2, 2016).

31. At all times relevant to the RRP Rule violations alleged in this Complaint, Respondent and Michael Parker performed renovation activities at 41 Park Avenue that constituted “renovations” within the meaning of 40 C.F.R. § 745.83.

32. The renovation activities performed by Respondent and Michael Parker at 41 Park Avenue constituted renovations for compensation within the meaning of TSCA Section 406(b) and the RRP Rule.

33. On November 27, 2018, EPA conducted an inspection at 41 Park Avenue for the purpose of determining Respondent’s compliance with the RRP and Disclosure Rules (“Inspection”).

Failure to Comply with RRP Rule at Target Housing Located at
41 Park Avenue

34. Forty-one Park Avenue was constructed in 1900, and is, therefore, “target housing” as defined in 40 C.F.R. § 745.103.

35. In September of 2017, Respondent performed renovations, including window replacement, at 41 Park Avenue, Unit B. This unit was unoccupied at the time of the renovation.

36. Respondent hired Michael Parker to do exterior renovation work at 41 Park Avenue, including preparing exterior surfaces for painting and painting. Michael Parker conducted such exterior renovation work during September 2018 and November 2018.

37. Forty-one Park Avenue, Unit B, was occupied by a family with a child under the age of six during the time that Mr. Parker conducted exterior renovations at 41 Park Avenue.

38. During the Inspection, the EPA inspector observed building debris on the ground in close proximity to the exterior portion of the building where Respondent had replaced five windows approximately 13 months previous to the Inspection. The EPA inspector also observed paint chips and paint debris around the entire exterior of the property.

39. During the Inspection, the EPA inspector observed that, while there was some plastic sheeting attached to the building, it was not properly affixed to the building nor was it sufficiently extended beyond the base of the structure to collect falling paint debris as required by 40 C.F.R. § 745.85(a)(2)(ii)(C).

40. At the time of the violations alleged in this Complaint, Respondent owned, managed, and offered for lease residential apartments, including the following:

- a. 41 Park Avenue, Unit B, Keene, NH (Built 1900); and
- b. 44 Spring Street, Unit A, Hinsdale, NH (Built 1890).

41. Pursuant to 40 C.F.R. § 745.103, at all times relevant to this Complaint, Respondent was the “lessor” of the properties listed in Paragraph 40.

42. All properties listed in Paragraph 40 were constructed prior to 1978, and are, therefore, “target housing” as defined in 40 C.F.R. § 745.103.

43. Respondent offered for lease the following units of residential housing to lessees on the dates set forth below:

- a. 41 Park Avenue, Unit B, Keene, NH: Lessees signed the lease on October 13, 2017, and the lease term commenced on November 1, 2017; and
- b. 44 Spring Street, Unit A, Hinsdale, NH; Lessees signed the lease on September 27, 2016, and the lease term commenced on October 1, 2016.

44. The families that leased the residential units referenced in Paragraph 43 included either a child under the age of six or a pregnant woman as of the date the lease term commenced.

45. On October 23, 2018, EPA received a complaint from a lessee of one of Respondent’s properties. The lessee reported that the household included a child younger than age six. The lessee further reported that upon signing the lease, Respondent did not give the lessee a form disclosing the presence of known lead-based paint (“LBP”) or LBP hazards known as a “disclosure form” or the EPA-approved lead hazard information pamphlet, as required by the Disclosure Rule.

46. During and following the Inspection, the EPA inspector reviewed lease transaction documents provided by Respondent, including lease transaction documents for the units listed above in Paragraphs 40 and 43.

47. Based upon the Inspection, other information and documents obtained from Respondent, and EPA's subsequent investigations, EPA has identified the following violations of the Act, the RRP Rule and the Disclosure Rule.

III. VIOLATIONS

Count 1: Performing, Offering, or Claiming to Perform Renovations without EPA Certification for Firm

48. Complainant incorporates by reference Paragraphs 1 through 47.

49. Pursuant to 40 C.F.R. § 745.89(a), firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling. 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 § 745.89(a)(1) in target housing unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82.

50. At the time of the window replacement renovations at 41 Park Avenue, Unit B, Respondent was not a certified firm under the RRP Rule.

51. In performing window replacement renovations without certification from EPA under § 745.89 at 41 Park Avenue, Unit B, Respondent violated 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a).

52. None of the exceptions identified in 40 C.F.R. § 745.82 applies to the renovation activity at 41 Park Avenue, Unit B.

53. The above-alleged violation is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87(a), and a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

**Count 2: Failure to Ensure a Certified Renovator
Performs or Directs Work**

54. Complainant incorporates by reference Paragraphs 1 through 53.

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

56. At no time before or during the exterior renovation of 41 Park Avenue was the individual performing the renovation activities either a certified renovator or trained by a certified renovator, as required by 40 C.F.R. § 745.90, nor did Respondent assign a certified renovator to the exterior renovation as required under 40 C.F.R. §§ 745.89(d)(1) and (d)(2).

57. Respondent's failure to ensure that the individual performing exterior renovation activities at 41 Park Avenue was either a certified renovator or trained by a certified renovator constituted a failure to ensure that a certified renovator was assigned to the 41 Park Avenue renovation to carry out all of the responsibilities identified in 40 C.F.R. § 745.90, and a violation of 40 C.F.R. §§ 745.89(d)(1) and (2) and Section 409 of TSCA.

58. The above-listed violation alleged in this count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87(a), and a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

Count 3: Failure of Respondent's Firm to Ensure Renovations Met Work Practice Standards

59. Complainant incorporates by reference Paragraphs 1 through 58.

60. 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.

61. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), in pertinent part, before beginning an exterior renovation, firms performing exterior renovations in target housing 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.

62. While renovating the exterior of 41 Park Avenue, Respondent failed to ensure that the ground was covered with impermeable material sufficient to collect falling paint debris, in compliance with 40 C.F.R. § 745.85(a)(2)(ii)(C), resulting in lead-based paint chips and debris falling directly onto the ground around the perimeter of 41 Park Avenue.

63. The failure of Respondent to ensure that, during the renovation at 41 Park Avenue, the ground was covered with impermeable material in compliance with 40 C.F.R. § 745.85(a)(2)(ii)(C), constitutes a violation of 40 C.F.R. § 745.89(d)(3) and 40 C.F.R. § 745.85(a)(2)(ii)(C), and Section 409 of TSCA.

64. The above-listed violation alleged in this count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87(a), and a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

Count 4: Failure of Respondent to Include Lead Warning Statement

65. Complainant incorporates by reference Paragraphs 1 through 64.

66. Pursuant to 40 C.F.R. § 745.113(b)(1), each contract to lease target housing must include a Lead Warning Statement within or as an attachment to the contract.

67. Respondent failed to include a Lead Warning Statement within or as an attachment to the contracts with the lessees listed in Paragraph 43 before the lessees became obligated to lease said housing under a contract.

68. Respondent's failure to include Lead Warning Statements within or as attachments to the contracts to lease the target housing described in Paragraph 43 constitutes violations of 40 C.F.R. § 745.113(b)(1) and Section 409 of TSCA.

69. The above-listed violations alleged in this count are prohibited acts under TSCA Section 409 and 40 C.F.R. § 745.87(a), and violations for which penalties may be assessed pursuant to Section 16 of TSCA.

Count 5: Failure to Provide Lessee EPA-Approved Lead Hazard Information Pamphlet

70. Complainant incorporates by reference Paragraphs 1 through 69.

71. Pursuant to 40 C.F.R. § 745.107(a)(1), lessors must provide lessees with an EPA-approved lead hazard information pamphlet including EPA's *Protect your*

Family from Lead in Your Home or its equivalent before the lessees are obligated under a contract to lease target housing.

72. During the Inspection, Respondent was unable to provide to the EPA inspector any records acknowledging tenant receipt of the *Protect your Family from Lead in Your Home* or equivalent pamphlet as required pursuant to 40 C.F.R. § 745.113(b)(4).

73. Respondent's failure to provide the EPA-approved pamphlet or its equivalent to the lessees listed in Paragraph 43 prior to the lessees becoming obligated to lease target housing constitutes violations of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

74. The above-listed violations alleged in this count are prohibited acts under TSCA Section 409 and 40 C.F.R. § 745.87(b), and violations for which penalties may be assessed pursuant to Section 16 of TSCA.

IV. PROPOSED PENALTY

75. In determining the amount of any penalty to be assessed, Section 16 of TSCA requires Complainant to consider the nature, circumstances, extent and gravity of the violations and, with respect to a Respondent, its ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

76. To assess a penalty for the alleged violations of the RRP Rule in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to account EPA's August 2010 Interim Final Policy entitled, "Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities

Rule” (the “LBP Consolidated ERPP”), a copy of which is enclosed with this Complaint. The LBP Consolidated ERPP provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

77. To assess a penalty for the alleged violations of the Disclosure Rule in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA’s December 2007 Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy (the “ERP”), a copy of which is enclosed with this Complaint. The ERP provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

78. Complainant proposes that Respondent be assessed a civil penalty in the amount of one-hundred twenty-seven thousand four hundred and twenty-three dollars (**\$127,423**) for the TSCA violations alleged in this Complaint. (See Attachment I to this Complaint explaining the reasoning for this penalty.) The penalties proposed for the RRP and Disclosure rule violations alleged in this Complaint are set forth below:

Count	Regulation Violated	Description	Penalty
1	40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a)	Performing, Offering, or Claiming to Perform Renovations without EPA Certification for Firm	\$4,667
2	40 C.F.R. § 745.89(d)(1) and (2) and 40 C.F.R. § 745.81(a)(2)	Failure to Ensure that a Certified Renovator Performs or Directs Work	\$23,335
3	40 C.F.R. § 745.89(d)(3) and (2) and 40 C.F.R. § 745.85	Failure of Respondent's Firm to Ensure Renovations Met Work Practice Standards	\$31,113
4	40 C.F.R. § 745.113(b)(1)	Failure of Respondent to Include Lead Warning Statement	\$32,640
5	40 C.F.R. § 745.107(a)(1)	Failure to Provide Lessee EPA-Approved Lead Hazard Information Pamphlet	\$35,668

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

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

*In the Matter of David Bean
TSCA-01-2019-0052*

80. The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint. Where a Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. The failure of a Respondent to deny an allegation contained in the Complaint constitutes an admission of that allegation. The Answer must also state the circumstances or arguments alleged to constitute the grounds of any defense; the facts that a Respondent disputes; the basis for opposing any proposed penalty; and whether a hearing is requested. See 40 C.F.R. § 22.15 of the Consolidated Rules of Practice for the required contents of an Answer.

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

Wanda A. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: ORC 04-6
Boston, Massachusetts 02109-3912

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

Kathleen E. Woodward
Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: ORC 04-2
Boston, Massachusetts 02109-3912

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

84. 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 the Complaint.

VI. SETTLEMENT CONFERENCE

85. Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with Complainant or her designee concerning the violations alleged in this Complaint. Such conference provides Respondent with an opportunity to respond informally to the allegations, and to provide whatever additional information may be relevant to the disposition of this matter. To explore the possibility of settlement, Respondent or Respondent's counsel should contact Kathleen E. Woodward, Senior Enforcement Counsel, at the address cited above or by calling (617) 918-1780. Please

note that a request for an informal settlement conference by Respondent does not automatically extend the 30-day time period within which a written Answer must be submitted in order to avoid becoming subject to default.



Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 1

9/27/19

Date

ATTACHMENT I

In the Matter of David Bean
Docket Number TSCA-01-2019-0052

PROPOSED PENALTY SUMMARY

The following provides the justification for the proposed penalty calculation in the administrative penalty action against David Bean (“Respondent”). Respondent’s business addresses are 1129 Johnston Rd., Watchung, New Jersey, 07069 and 41 Park Ave., Keene, New Hampshire 03038. This administrative penalty action seeks to assess a civil penalty in the amount of **\$127,423** for alleged violations of the Renovation, Repair, and Painting Rule (“RRP Rule”) and the Lead Disclosure Rule (“Disclosure Rule”). The portion of the penalty attributable to RRP violations was calculated according to EPA’s August 2010 Interim Final Policy entitled, “*Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*” (the “LBP Consolidated ERPP”). The portion of the penalty attributable to Disclosure Rule violations was calculated according to EPA’s December 2007 *Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy* (“Disclosure Rule ERPP”). A breakdown of the penalty by count is set forth below.

RENOVATION, REPAIR, AND PAINTING RULE VIOLATIONS

COUNT 1. Performing, Offering, or Claiming to Perform Renovations without EPA Certification for Firm

Provision Violated: Forty C.F.R. § 745.81(a)(2)(ii), provides that no firm may perform, offer, or claim to perform renovations without certification from EPA under 40 C.F.R. § 745.89(a)(1) in target housing unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82.

Circumstance Level: A firm’s performance, offer, or claim to performance of renovations without EPA certification 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. § 745.89(d) is a *Level 3a* violation.

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

Respondent failed to assign a certified renovator to the following renovation project:

Respondent/ Lessor	Address	Approximate Date of Renovation	Children/Ages	Extent of Harm	Gravity -Based Penalty
David Bean	41 Park Ave., Keene, NH	09/01/2018 through at least 11/27/2018	At least one child under the age of 6	Major	\$23,335

**COUNT 3. - Failure of Respondent’s Firm to Ensure Renovations Met
Work Practice Standards**

Provision Violated: Failure to properly contain exterior work area by covering the ground with plastic to collect falling paint debris; 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(ii)(C).

Circumstance Level: The failure to ensure that renovations properly contain the exterior work area by covering the ground with plastic to collect falling paint debris in compliance with the RRP results in a *high probability* of impacting human health and the environment due to exposure to lead-based paint, lead dust, and debris. As a result, under the LBP Consolidated ERPP Appendix A, a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(ii)(C) and is a *Level 2a* violation.

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

Respondent failed to include the Lead Warning Statement in, or attached to, the leases for the target housing units identified below:

Respondent/ Lessors	Address	Approximate Start of Lease Term	Children/Ages	Extent of Harm	Gravity- Based Penalty
David Bean	41 Park Ave., Unit B, Keene, NH	11/01/2017	At least one child under the age of 6	Major	\$16,320
David Bean	44 Spring Street, Apt A, Hinsdale, NH	09/28/2016	At least one child under the age of 6	Major	\$16,320

COUNT 5. Failure to Provide an EPA-approved Lead Hazard Pamphlet

Provision Violated: 40 C.F.R. § 745.107(a)(1) requires a lessor to provide lessee with an EPA-approved lead hazard information pamphlet, “Protect your Family from Lead in the Home,” before a lessee is obligated under a contract to lease target housing.

Circumstance Level: Failure to provide lessee with an EPA-approved lead hazard information pamphlet, “Protect your Family from Lead in the Home,” before a lessee is obligated under a contract to lease target housing pursuant to 40 C.F.R. § 745.107(a)(1) results in a high probability of impairing the lessee’s ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information with regard to leasing the target housing in question. As a result, under the Disclosure Rule ERPP Appendix B, a violation of 40 C.F.R. § 745.107(a)(1) is a *Level 1* violation.

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

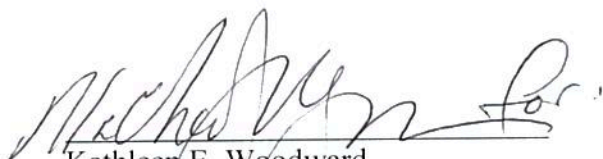
In the Matter of:)	
)	
David Bean)	Docket No. TSCA-01-2019-0052
1129 Johnston Drive)	
Watchung, NJ 07069)	
)	
Respondent)	Certificate of Service
)	
)	

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

Original and One Copy (Hand-Delivered):	Wanda Santiago Regional Hearing Clerk U.S. EPA, Region I 5 Post Office Square, Suite 100 (ORC 04-6) Boston, MA 02109-3912
--	---

Copy, including 40 C.F.R. Part 22, Penalty Policy for Renovation Repair and Painting Rule, and Disclosure Rule Penalty Enforcement Response and Penalty Policy (Certified Mail, Return Receipt Requested):	David Bean 1129 Johnston Drive Watchung, NJ 07069
---	---

Dated: September 30, 2019


Kathleen E. Woodward
Senior Enforcement Counsel
U.S. EPA, Region I
5 Post Office Square, Suite 100 (ORC 04-2)
Boston, Massachusetts 02109-3912