

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

August 13, 2024 @ 11:34 am

USEPA – Region II

Regional Hearing Clerk

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In the Matter of :

Luna Builders, LLC, :

Respondent. :

Proceeding under Section 16(a) of
the Toxic Substances Control Act. :

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

Docket No. TSCA-02-2024-9173

COMPLAINT

This is a civil administrative action instituted pursuant to § 16(a), 15 U.S.C. § 2615(a), of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 *et seq.* This Complaint serves notice of Complainant's preliminary determination that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart E, which was promulgated pursuant to 15 U.S.C. §§ 2682, 2686, and 2687.

Complainant in this proceeding, the Director, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency ("EPA"), Region 2, has been duly delegated the authority to institute this action. Complainant, as and for her Complaint against Respondent, hereby alleges upon information and belief:

STATUTORY AND REGULATORY BACKGROUND

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

2. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations governing the training and certification of individuals and contractors engaged in lead-based paint activities, including renovation of residences built prior to 1978. Section 406 of TSCA, 15 U.S.C. § 2686, requires that the Administrator promulgate regulations requiring persons who perform for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant prior to commencing the renovation.

3. Section 407 of TSCA, 15 U.S.C. § 2687, requires that the regulations promulgated pursuant to TSCA include recordkeeping and reporting requirements to ensure effective implementation.

4. Section 409 of TSCA, 15 U.S.C. § 2689, makes it unlawful for any person to fail or refuse to comply with these sections of TSCA, as well as all other provisions, rules, or orders under Subchapter IV of TSCA.

5. In 1996, the EPA promulgated regulations to implement Section 402(a) of TSCA, 15 U.S.C. § 2682(a). These regulations are set forth at 40 C.F.R. Part 745, Subpart L, *Lead Based Paint Activities*. In 1998, the EPA promulgated regulations to implement Section 406(b) and Section 407 of TSCA, 15 U.S.C. § 2686(b) and 2687. These regulations were set forth at 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*. In 2008, the EPA promulgated regulations to implement Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), by amending and recodifying regulations at 40 C.F.R. Part 745, Subparts E (Renovation, Repair, and Painting Rule) and L (Abatement Rule), 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).

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

7. Forty C.F.R. §§ 745.80 and 745.82(a) provide that the RRP Rule applies to all renovations performed for compensation in target housing and child-occupied facilities.

8. 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.

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

10. 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.

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

12. The regulations at 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89 provide that firms that perform renovations for compensation must apply to EPA for and obtain certification to perform renovations.

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

14. The regulation at 40 C.F.R. § 745.87(d) provides that violators may be subject to civil sanctions pursuant to Section 16 of TSCA, 15 U.S.C. § 2615. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides that any person who violates Section 409 of TSCA, 15 U.S.C. § 2689, shall be liable to the United States for a civil penalty of up to \$25,000 for each such violation. Each day that such a violation continues constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. § 2614. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, in conjunction with the implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$48,512 for each violation occurring after November 2, 2015, where penalties are assessed on or after December 27, 2023. *See also* 88 Fed. Reg. 89309, Dec. 27, 2023.

GENERAL FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

15. Respondent is Luna Builders, LLC (“Luna Builders” or “Respondent”).

16. Respondent is a corporation organized pursuant to the laws of the State of New Jersey.

17. Respondent at all times relevant herein was a “person” as that term is defined at 40 C.F.R. § 745.83.

18. Respondent’s primary place of business is located at 607 Sayre Street, Neptune, NJ 07753.

19. Respondent’s owner and/or representative at all times relevant herein was Edgar Muñoz.

20. Respondent is a general contractor that performs “Renovations” as that term is defined at 40 C.F.R. § 745.83.

21. On or about August 21, 2019, EPA received an anonymous tip/complaint from a resident of the Riverside Gardens apartment complex located at 12-18 Riverside Drive, Cranford, NJ (“Riverside Gardens” or “worksite”) about ongoing renovation work that Respondent was performing there.

22. Riverside Gardens was constructed in 1949.

23. Riverside Gardens is “target housing” within the meaning of Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and the RRP Rule.

24. On or about August 22, 2019, duly credentialed EPA inspectors conducted a worksite inspection (“August 2019 inspection”) pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, where EPA learned from interviews with the Riverside Gardens property manager and Respondent’s employees that Respondent had been hired by the property owner to conduct renovations on the interiors of several apartments at Riverside Gardens.

25. The renovations at Riverside Gardens were not emergency renovations within the meaning of 40 C.F.R. § 745.82(b), but were planned renovations for which construction permits had been issued, pursuant to New Jersey’s Uniform Construction Code, on March 20, 2019 (19-0279) and May 20, 2019 (19-0489).

26. During the August 2019 inspection, EPA inspectors observed Respondent’s employees working in Riverside Gardens apartments without proper lead paint containment practices, including but not limited to the absence of warning signs, inadequate ground and window coverings, and painted plaster debris on open windowsills.

27. During the August 2019 inspection, EPA inspectors observed painted debris and dust on open windowsills and on uncovered floors while a fan was running in an apartment unit undergoing renovation in Building 12.

28. During the August 2019 inspection, EPA inspectors observed that renovation waste was improperly contained both in the garbage cans in the interior work areas and in a 30-yard dumpster on the property.

29. During the August 2019 inspection, an employee of Respondent told the inspectors that he was unaware of the RRP Rule and that there was no certified renovator on-site nor was a certified renovator assigned to the ongoing renovation activities.

30. As a follow-up to the worksite inspection, on or about September 13, 2019, EPA sent an Information Request Letter (“IRL”) addressed to Edgar Muñoz, Luna Builders, LLC, 607 Sayre Street, Neptune, NJ 07753, requesting information regarding the work performed at Riverside Gardens and his company’s compliance with the RRP Rule.

31. As of the date of this filing, EPA has not received a response to the IRL from Respondent.

32. On or about April 12, 2022, EPA sent Respondent a Notice of Potential Violations and Opportunity to Confer letter (“April 2022 Letter”) by email at lunallc@outlook.com, providing Respondent with an opportunity to engage with EPA and discuss the nature of the potential RRP Rule violations involving Riverside Gardens.

33. On or about October 14, 2022 and December 13, 2022, EPA sent Respondent additional copies of the April 2022 Letter by certified mail to Respondent's address at 607 Sayre Street, Neptune, New Jersey 07753.

34. As of the date of this filing, EPA has not received a response from Respondent concerning the April 2022 Letter.

35. Respondent is, and at all times relevant to this Complaint was, the "firm" contracted to perform "renovation," as those terms are defined at 40 C.F.R § 745.83.

36. Respondent's work at Riverside Gardens was a "renovation for compensation" as specified in 40 C.F.R. § 745.82(a).

37. In the course of Respondent's renovation of Riverside Gardens, Respondent disturbed more than six square feet of painted interior surfaces.

38. Respondent and the work it performed at Riverside Gardens are subject to the regulations and requirements pertaining to Residential Property Renovation promulgated pursuant to 15 U.S.C. § 2682(c)(3), and set forth at 40 C.F.R. Part 745, Subpart E.

COUNT 1

Failure of renovation firm to post signs.

39. Complainant realleges and incorporates by reference all preceding allegations as though fully set forth herein.

40. Pursuant to 40 C.F.R. § 745.85(a)(1), renovation firms must 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; prepare, to the extent practicable, signs in the primary language of the occupants; and post signs before beginning the renovation and make sure they remain in place and readable until the renovation and post-renovation cleaning verification have been completed.

41. During the August 2019 inspection, EPA inspectors observed that there were no warning signs posted on the property.

42. Respondent failed to post warning signs at Riverside Gardens as required by 40 C.F.R. § 745.85(a)(1).

43. Failure to post warning signs while the renovation is being performed is a violation of 40 C.F.R. § 745.85(a)(1).

44. Respondent's failure or refusal to comply with 40 C.F.R. § 745.85(a)(1) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

COUNT 2

Failure to close windows and doors in the work area, cover doors with plastic sheeting or other impermeable material, and 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.

45. Complainant realleges and incorporates by reference all preceding allegations as though fully set forth herein.

46. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(C), firms conducting renovations must, before beginning the renovation, close windows and doors in the work area, cover doors with plastic sheeting or other impermeable material, and 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.

47. During the August 2019 inspection, EPA inspectors observed and photographed open windows in the work area, a fan blowing inside an apartment undergoing renovation, and a lack of plastic sheeting covering the apartment door in violation of 40 C.F.R. § 745.85(a)(2)(i)(C).

48. Before beginning the renovation at Riverside Gardens, Respondent did not: close windows and doors in the work area, cover doors with plastic sheeting or other impermeable material, and 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, in violation of 40 C.F.R. § 745.85(a)(2)(i)(C).

49. Respondent's failure or refusal to comply with 40 C.F.R. § 745.85(a)(2)(i)(C) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

COUNT 3

Failure to cover floor with plastic sheeting.

50. Complainant realleges and incorporates by reference all preceding allegations as though fully set forth herein.

51. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(D), firms conducting renovations must, before beginning the renovation, cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

52. During the August 2019 inspection, EPA inspectors observed and took photographs of the work area demonstrating that the floors were not covered with plastic sheeting.

53. For the renovations at Riverside Gardens, Respondent did not cover the floor with plastic sheeting or other disposable impermeable material.

54. Failure to cover the floor with plastic sheeting or other disposable impermeable material is a violation of 40 C.F.R. § 745.85(a)(2)(i)(D).

55. Respondent's failure or refusal to comply with 40 C.F.R. § 745.85(a)(2)(i)(D) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

COUNT 4

Failure to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.

56. Complainant realleges and incorporates by reference all preceding allegations as though fully set forth herein.

57. Pursuant to 40 C.F.R. § 745.85(a)(4)(i), firms performing renovations must contain waste from renovation activities to prevent release of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

58. During the August 2019 inspection, EPA inspectors observed and photographed Respondent storing waste from renovation activities in open garbage cans in the work area and in an open dumpster located outside in the rear of the property.

59. For the renovation at Riverside Gardens, Respondent failed to properly contain waste from renovation activities in the work area to prevent the release of dust and debris before the waste was removed from the work area for storage or disposal.

60. Failure to contain waste from renovation activities in the work area is a violation of 40 C.F.R. § 745.85(a)(4)(i).

61. Respondent's failure or refusal to comply with 40 C.F.R. § 745.85(a)(4)(i) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

COUNT 5

Failure to obtain initial firm certification from EPA.

62. Complainant realleges and incorporates by reference all preceding allegations as though fully set forth herein.

63. Pursuant to 40 C.F.R. §§ 745.89(a) and 745.81(a)(2)(ii), firms that perform renovations for compensation must apply to EPA for and must obtain certification to perform renovations.

64. On or about August 22, 2019, EPA inspectors searched the Federal Lead-based Paint Program database and determined that Respondent was not a lead-safe certified firm.

65. Following the August 2019 inspection, Respondent submitted an application for RRP initial certification on December 5, 2019. Respondent received initial certification on December 9, 2019 (certification number NAT-F211246-1) which expires on December 23, 2024.

66. While performing the renovation at Riverside Gardens, Respondent was not EPA-certified to perform the work.

67. Failure to obtain certification from EPA is a violation of 40 C.F.R. § 745.89(a).

68. Respondent's failure to comply with 40 C.F.R. § 745.89(a) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

COUNT 6

Failure of a firm to ensure that a certified renovator is assigned to renovation and discharges all of the certified renovator responsibilities.

69. Complainant realleges and incorporates by reference all preceding allegations as though fully set forth herein.

70. Pursuant to 40 C.F.R. § 745.89(d)(2), firms must ensure that a certified renovator is assigned to a renovation and discharges all of the certified renovator responsibilities.

71. During EPA's inspection at Riverside Gardens on or about August 22, 2019, EPA inspectors determined that there was not a certified renovator assigned to the project.

72. For the renovation of Riverside Gardens, Respondent failed to ensure that a certified renovator was assigned to the project and that the certified renovator's responsibilities were discharged.

78. Failure to ensure that a certified renovator is assigned to each renovation performed by a firm and that a certified renovator's responsibilities are discharged under the RRP Rule is a violation of 40 C.F.R. § 745.89(d)(2).

79. Respondent's failure or refusal to comply with 40 C.F.R. § 745.89(d)(2) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

PROPOSED CIVIL PENALTY

For purposes of determining the amount of any penalty to be assessed, Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), provides, "In determining the amount of a civil penalty, the Administrator [of EPA] 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." This Complaint does not specify a proposed penalty. EPA will do so pursuant to 40 C.F.R. § 22.19(a)(4), which provides:

If the proceeding is for the assessment of a penalty and complainant has not specified a proposed penalty, each party shall include in its prehearing information exchange all factual information it considers relevant to the assessment of a penalty. Within fifteen (15) days after respondent files its prehearing information exchange, complainant shall file a document specifying a proposed penalty and explaining how the proposed penalty was calculated in accordance with any criteria set forth in [TSCA].

At such time as it proposes a specified penalty for the violations alleged in this Complaint, EPA will consider the above-listed statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), and such consideration will include any credible documentary information Respondent has introduced into the litigation or has otherwise provided EPA for settlement purposes. In developing a specified penalty for each of the set of violations alleged in this Complaint, EPA will utilize the guidance set forth in TSCA Section 16(a)(2)(B), 15 U.S.C. § 2615(a)(2)(B), and EPA's Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule ("LBP Consolidated ERPP"). The LBP Consolidated ERPP sets forth a general penalty assessment policy for violations of Section 409 of TSCA, including violations of the RRP Rule. The LBP Consolidated ERPP provides a rational, consistent, and equitable calculation methodology for applying the statutory factors to particular cases.

As set forth in the above allegations, at the time of TSCA's passage in 1976, twenty-five thousand dollars (\$25,000) represented the maximum amount per violation EPA could seek and obtain for any violation of Section 15 of TSCA, 15 U.S.C. § 2614; that amount has been increased to forty-eight thousand, five hundred and twelve dollars (\$48,512) for any such violation occurring after November 2, 2015 and for which a penalty has been assessed after December 27, 2023. 88 Fed. Reg. 89311 (Dec. 27, 2023). Accordingly, this forty-eight thousand, five hundred and twelve dollars (\$48,512) amount constitutes the maximum penalty authorized under the Inflation Adjustment Act for each of the aforementioned alleged violations. See 40 C.F.R. Part 19.

Complainant thus sets forth the following:

Count 1: Failure to Post Signs

Requirement: The applicable requirements regarding the relevant provisions have been alleged above (40 C.F.R. § 745.85(a)(1))

Violation: During EPA's inspection of the worksite on or about August 22, 2019, EPA inspectors observed that there were no warning signs posted either leading to or inside the work area. Signs must be posted before the beginning of the renovation and must remain in place and readable until the renovation and post-renovation cleaning have been completed.

Number of Violations: 1

Severity of Violation: Significant

Statutory Authority for Penalty: 15 U.S.C. § 2689

Count 2: Failure to Close Windows and Doors in Work Area and use Plastic Sheeting to Cover Doors

Requirement: The applicable requirements regarding the relevant provisions have been alleged above (40 C.F.R. § 745.85(a)(2)(i)(C))

Violation: During EPA's inspection of the worksite on or about August 22, 2019, EPA inspectors observed that there were windows open in the work area, a fan was blowing inside the apartment, and the apartment entry door was not covered with plastic sheeting.

Number of Violations: 1

Severity of Violation: Significant

Statutory Authority for Penalty: 15 U.S.C. § 2689

Count 3: Failure to Cover the Floor with Plastic Sheeting

Requirement: The applicable requirements regarding the relevant provisions have been alleged above (40 C.F.R. § 745.85(a)(2)(i)(D))

Violation: During EPA's inspection of the worksite on or about August 22, 2019, EPA inspectors observed that the interior floors were not covered with plastic sheeting.

Number of Violations: 1

Severity of Violation: Minor

Statutory Authority for Penalty: 15 U.S.C. § 2689

Count 4: Failure to Contain Waste from Renovation Activities in Work Area

Requirement: The applicable requirements regarding the relevant provisions have been alleged above (40 C.F.R. § 745.85(a)(4)(i))

Violation: During EPA's inspection of the worksite on or about August 22, 2019, EPA inspectors observed that waste from the renovation activity was being stored inside the apartment in open garbage cans and outside the building in an open dumpster.

Number of Violations: 1

Severity of Violation: Significant

Statutory Authority for Penalty: 15 U.S.C. § 2689

Count 5: Failure to Obtain Certification from EPA

Requirement: The applicable requirements regarding the relevant provisions have been alleged above (40 C.F.R. § 745.89(a))

Violation: EPA inspectors conducted a search of the Federal Lead-based Paint Program database on or about August 22, 2019 and determined that Respondent was not a lead-safe certified firm at the time of EPA's inspection of the worksite.

Number of Violations: 1

Severity of Violation: Minor

Statutory Authority for Penalty: 15 U.S.C. § 2689

Count 6: Failure to Ensure a Certified Renovator is Assigned and Discharges Certified Renovator Responsibilities

Requirement: The applicable requirements regarding the relevant provisions have been alleged above (40 C.F.R. § 745.89(d)(2))

Violation: During EPA's inspection of the worksite on or about August 22, 2019, EPA inspectors learned from Respondent's employees that there were not certified renovators assigned to the project.

Number of Violations: 1

Severity of Violation: Significant

Statutory Authority for Penalty: 15 U.S.C. § 2689

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation were originally set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS ("Consolidated Rules of Practice"), and which are codified at 40 C.F.R. Part 22. These rules were amended to simplify the administrative processing of cases by expanding the availability of electronic filing and service procedures and eliminating inconsistencies. 82 Fed. Reg. 2230, January 9, 2017. These amendments became effective on May 22, 2017, and apply to all new case filings after that date. A copy of the current Consolidated Rules of Practice, incorporating these amendments, accompanies this Complaint.

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866

The attached Standing Order from the Regional Judicial Officer of U.S. Environmental Protection Agency, Region 2, dated August 3, 2020, authorizes electronic service of certain Part 22 documents, including the Respondent's Answer to this Complaint (Attachment A). Respondent may therefore serve its Answer upon the Regional Hearing Clerk electronically to the following address:

Maples.Karen@epa.gov

A copy of Respondent's Answer, including any request for hearing, must also be sent to Complainant. 40 C.F.R. § 22.15(a). Complainant has designated Assistant Regional Counsel Lauren Charney to receive service on her behalf. Respondent may send documents filed in this matter to Ms. Charney electronically at Charney.Lauren@epa.gov.

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of their defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). *See generally* Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40

C.F.R. Part 22. See Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), which states, in part: “A civil penalty for a violation of section 2614 ... of this title [15 U.S.C. § 2614] shall be assessed by the Administrator by an order made on the record after opportunity ... for a hearing in accordance with section 554 of Title 5 [5 U.S.C. § 554].”

If Respondent fails to request a hearing, such failure may operate to preclude Respondent from obtaining judicial review of an adverse EPA order. See 15 U.S.C. § 2615(a)(3), which states, in part: “Any person who requested in accordance with paragraph (2)(A) [15 U.S.C. § 2615(a)(2)(A)] a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business.”

C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e., in accordance with the thirty (30)-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). 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). Following a default by Respondent for failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

D. Filing of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent has filed an Answer(s) should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk. Respondent should register to use the EPA e-filing system: <https://yosemite.epa.gov/OA/EAB/EAB-ALJ Upload.nsf/HomePage?ReadForm>

E. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board (“EAB”) (see 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the Agency’s Environmental Appeals Board, Respondent must do so “within thirty (30) days after the initial decision is served.” 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, “5 days shall be added to the time allowed by these [rules] for the filing of a responsive document.” Note that the forty-five (45) day period provided for in

40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent or any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Lauren P. Charney, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency Region 2
(212)-637-3181
Charney.Lauren@epa.gov

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal

the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entry into a settlement through the signing of such Consent Agreement and its compliance with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy, or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements and to maintain such compliance.

Kathleen Anderson, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007-1866

To: Edgar Muñoz
Luna Builders, LLC
607 Sayre Street
Neptune, NJ 07753

Edgar Muñoz
Luna Builders, LLC
1509 Rustic Drive, Apt 7
Ocean, NJ 07712

Attachments
RJO Standing Order Authorizing Electronic Service
Part 22 Consolidated Rules of Practice

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Complaint, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one electronic copy to:

Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, New York 10007-1866
Maples.Karen@epa.gov

Copy by Overnight Mail, Certified Mail Return Receipt Requested, and one electronic copy to:

Edgar Muñoz
Luna Builders, LLC
607 Sayre Street
Neptune, NJ 07753
lunallc@outlook.com

and

Edgar Muñoz
Luna Builders, LLC
1509 Rustic Drive, Apt 7
Ocean, NJ 07712

signed: _____