

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

RECEIVED BY OALJ
2015 SEP 28 PM 4:45

In the Matter of LHP, LLC

Docket No. TSCA-07-2014-0029

130 N. 27th Street, #6
Lincoln Nebraska

Respondent

RESPONDENT'S INITIAL PREHEARING EXCHANGE

Comes now LHP, LLC, and in response to the Prehearing Order issued in this matter, respectfully submits Initial Prehearing Exchange, stating as follows:

1. (A) a list of names of the expert and other witnesses intended to be called at hearing, identifying each as a fact witness or an expert witness, a brief narrative summary of their expected testimony, and a curriculum Vitae or resume for each identified expert witness, or a statement that no witnesses will be called;

Respondent intends to call the following witnesses:

1. David Fiala. Mr. Fiala will testify as the owner and representative of Respondent and the person in charge of the renovation. Mr. Fiala will testify relating to the work done to the subject property and the procedures followed. Mr. Fiala will testify relating to the state of the property prior to work commencing and the state of the property during the time work was being completed. Mr. Fiala will testify regarding his communication with the inspector. Mr. Fiala also will testify relating to his communication with the EPA subsequent to the inspection.
2. Myner Herrera. Mr. Herrera will testify as the person in charge of the subject property at the time the inspection occurred. Mr. Herrera will testify relating to the work done to the subject property and the procedures followed. Mr. Herrera will testify relating to the work done to the subject property and the procedures followed. Mr. Herrera will testify relating to the state of the property prior to work commencing and the state of the property during the time work was being completed. Mr. Herrera will testify regarding his communication with the inspector.

3. Jered Muehlhausen. Mr. Muehlhausen is the owner of A-Team Pest Control and was the applicator of the termite treatment on the property the day before the inspection. Mr. Muehlhausen will testify as to the state of the property the two days prior to the inspection. Mr. Muehlhausen will also testify regarding dirt upon the wet paint of the foundation.

(B) Copies of All documents and Exhibits Intended to Be Introduced into Evidence;

RX1: Picture of the Property from the Listing prior to working being done on the Property and picture of the property after work was complete on the property;

Group RX2: Letter from Jered Muehlhausen and inspection report;

Respondent also intends to use Exhibits referenced in Complainant's PreHearing Exchange and any EPA documents, regulations or publications publically available that the Hearing Officer may take Judicial Notice of.

(C) Statement explaining its Views as to the Appropriate Place for the Hearing and an Estimate of Time Needed to Present Its Direct Case;

Respondent requests the hearing be held near Lincoln, Nebraska, where the subject property and Respondent are located. Respondent estimates it will need approximately four (4) hours to present its defense. Respondent does not request translation services.

(D) A Copy of Any Documents In Support of the Denial Made in the Answer

See B above.

3. **(A) A Copy of Any Documents in Support of the Allegations in Respondent's Defenses, if any, and an Explanation of its arguments in support of such defenses;**

See B above.

(B) All Factual Information Respondent Considers Relevant to the Assessment of a Penalty and any Supporting documentation;

There is no regulation relating to the need to clean up the ground or premises prior to beginning work on a property. Respondent specifically contacted the EPA hotline to discuss this issue and was told there is need to pick up paint chips that have fallen to the ground due to the age and disrepair of a property prior to beginning work upon the property. In this case, the property was old and in disrepair and prior to beginning work the property had paint chips covering the ground from weathering and neglect. The Respondent did not clean the paint chips form the ground prior to beginning work because there is no regulation that requires this. Therefore, during the work that Respondent did to the property there were paint chips on the ground.

On or about November 7 and 8, 2012, Respondent did a majority of the work to the Property, including scraping. On November 7, 2012, A-Team Pest Control came to the Property to perform termite treatment, the treatment was started on that date and continued on November 8, 2012 the termite treatment was concluded and the applicator noted that there were painters painting on this date and he had to brush some dirt off the fresh paint and pointed out other areas that painting needed to be retouched because of the treatment (see exhibits).

On November 9, 2012 when the EPA came to the Property the Property there was no scraping being done. In fact, all scraping was complete and only final paint and touchup work was being done on the property, including, painting touch ups from the termite treatment the previous day. Therefore, Respondent was not obligated to comply with the Rules as no lead paint was being disturbed on the date of the inspection, November 9, 2012. Therefore, no cover or plastic sheeting was required.

Regardless of this fact and even though all work related to lead pain was complete Respondent still complied with the lead paint rules. First, Respondent still had its safety signs up pursuant to the rules. Second, to the extent that Complainant alleges that the picture showing an open garage door could be a violation, Respondent affirmatively states that the door leading into the home from the garage goes into a storage area which has another full door that leads into the living area of the home and that door was closed. Furthermore, no windows were open.

Respondent has failed to produce any evidence which would demonstrate that any scraping or other lead paint related activity was occurring during the inspection. In fact, the only pictures produced by Respondent which shows work being done to the house was done from a distance and angle in which it is impossible to see what the workers are actually doing. In fact, if the picture where of better quality it would clear that the workers are brushing off dirt, caused by the termite treatment, from the foundation of the house.

Furthermore, the Property was not a "renovation for compensation" as contemplated by the Rules. Respondent owns the Property and was performing work on the Property that was in disrepair.

(C) If Respondent takes the position that the proposed penalty should be reduced or eliminated on any grounds, such as an inability to pay, then provide a detailed narrative statement explaining the precise factual and legal bases for its position and a copy of any and all documents upon which it intends to rely in support of such position.

Respondent again states that there is no regulation relating to the need to clean up the ground or premises prior to beginning work on a property. Respondent specifically contacted the EPA hotline to discuss this issue and was told there is need to pick up paint chips that have fallen to the ground due to the age and disrepair of a property prior to beginning work upon the property. In this case, the property was old and in disrepair and prior to beginning work the property had paint chips covering the ground from weathering and neglect. The Respondent did not clean the

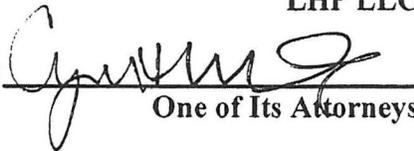
paint chips form the ground prior to beginning work because there is no regulation that requires this.

Reservation of Rights

Respondent respectfully reserves the right to call witnesses called by the Complainant; to recall any of its witnesses in rebuttal; and to modify or supplement the names of witnesses and exhibits prior to the Adjudicatory Hearing, pursuant to 40 C.F.R. Part 22, and upon adequate notice to the Respondent and Presiding Officer.

Respectfully Submitted,

LHP LLC

By:  _____
One of Its Attorneys

Delaney Law P.C.
Atty No. 44350
444 N. Wabash Ave., Third Floor
Chicago, Illinois 60611
(312) 276-0263

CERTIFICATE OF SERVICE

Cynthia M Rote certifies that she caused one original and one copy to be served upon the Office of Administrative Law Judges (address below) and one copy to be served upon Complainant (address below) on September 25, 2015.

Sybil Anderson, Headquarters Hearing Clerk
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Ronald Reagan Building, Room M1200
1300 Pennsylvania Avenue, NW
Washington, DC 20004

Robert W. Richards, Attorney
U.S. Environmental Protection Agency
11201 Renner Boulevard
Lenexa, Kansas 66219


Cynthia M Rote

Delaney Law
444 N Wabash Ave., 3rd Floor
Chicago, Illinois 60611
(312) 276-0263



402-540-6478

3136 Stephanos Drive
Lincoln, NE 68516
www.a-teampestcontrol.com
ateampestcontrol@hotmail.com

To whom this may concern:

A Copy of the Termite Treatment with the date and time that was completed at 800 A Street is attached. I started the treatment by drilling holes through the concrete along an interior garage wall. I did notice some areas outside with plastic and caution tape. I came back the next day to trench the dirt against the house with a pickaxe. There were painters painting while doing this. I remember this clearly, because my new pickaxe had gotten fresh paint on the handle after accidentally brushing it against the house. I had to brush some dirt off this fresh paint. I was afraid the painters would be upset and tried to remove the dirt from the fresh paint. I pointed out the area to the painters in case they needed to retouch it. I also had to ask the painters if it was okay to move some hoses from their paint bucket for a moment while I treated. The termite treatment was completed this day by injecting chemical deep into the soil adjacent to the house within the trenches. Untreated dirt was then backfilled into the trenches to cover the treated areas.

Jered Muehlhausen
Owner and Pesticide Applicator
A-Team Pest Control

Customer Name: David Fiala Applicator: Jered Muehlhausen ID# NEB084569

Customer Address: 800 A Street 3136 Stephanos Dr. Lincoln, NE 68516

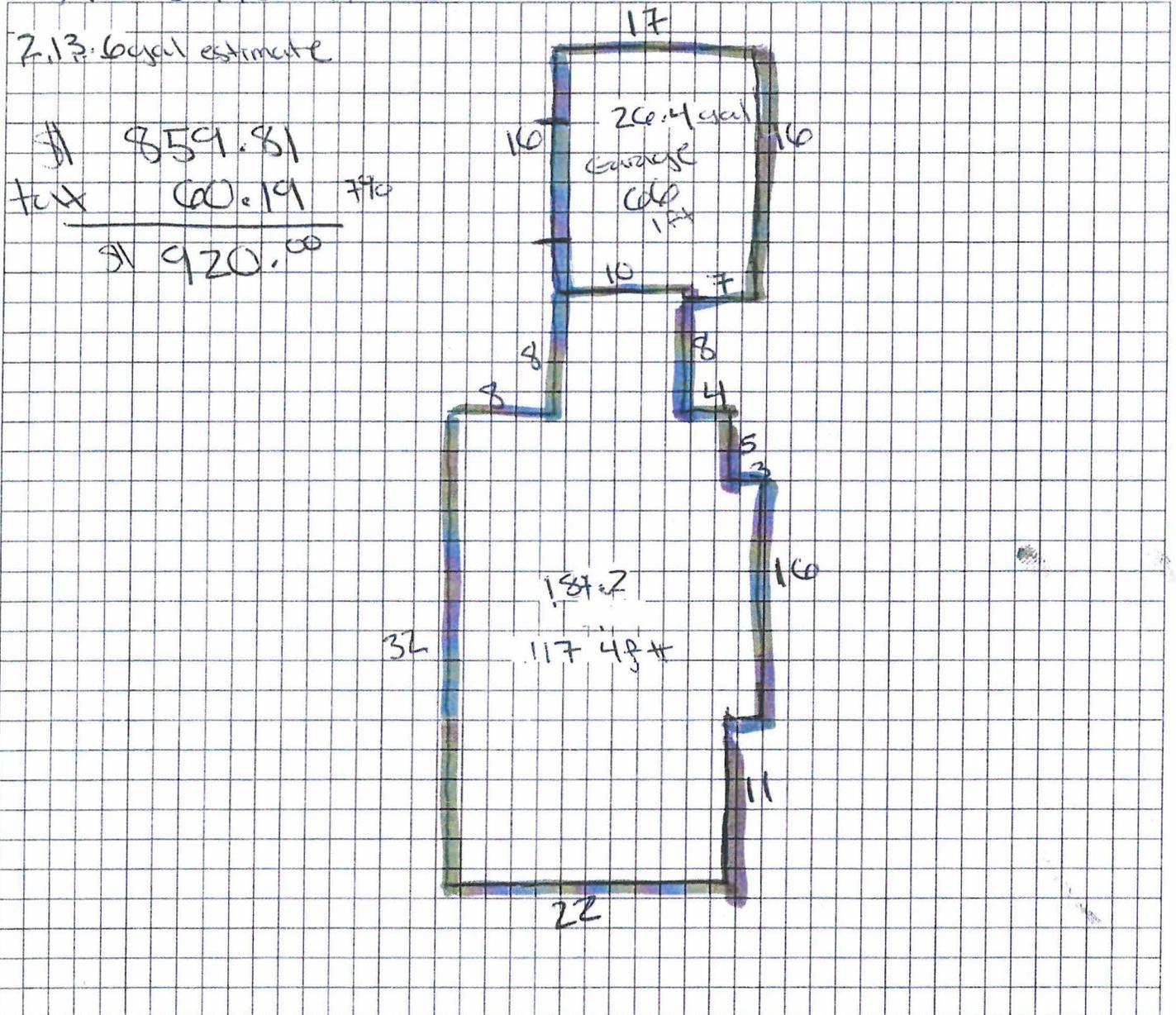
Lincoln, NE 68502 Chemical: Premise

Gallons Used: 200

Target Pest: Subterranean Termites Active Ingredient %: 0.05% Imidacloprid

Date & Time: 11/8/12 @ 2:30pm - 5pm, 11-4-12 @ 3pm - 7pm EPA#: 432-1332

Areas Treated



A yearly termite inspection by A-Team Pest Control is required for a 10 year Termitid or warrantee. This is not a wood repairable guarantee.

Customer Signature: [Signature] For LAPUC

A-Team Pest Control is not liable for sewer, electric, gas, or water lines of any kind, carpet or any damage to residence which occurs as the result of work performed by A-Team Pest Control pursuant to this contract

Pictures of 800 A Street with request to vacant EPA violations

This is a listing picture taken in early 2012 or late 2011. Note the paint is falling off the house, note the concrete blocks and foundation for the bottom 28-30" of home.



11-9-12 Picture of painted 800 A Street



800 A in 2013 Prior to Occupancy



800 A Street inside in 2013 prior to Occupancy

