UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:	:	
Boston Design & Construction Co., Inc.	:	**U.S. EPA Docket No. TSCA-03-2015-0258**
Respondent.	:	

INITIAL DECISION AND DEFAULT ORDER

This is a civil administrative proceeding initiated pursuant to Section 16(a) of the Toxic Substances Control Act, as amended by the Residential Lead-Based Paint Hazard Reduction Act of 1992 (collectively referred to as "TSCA"), 15 U.S.C. § 2615(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22.

On September 30, 2015, the Director of the Land and Chemicals Division of the United States Environmental Protection Agency, Region 3 ("Complainant") commenced this proceeding with the filing of an Administrative Complaint and Notice of Opportunity for a Hearing ("Complaint") against Boston Design & Construction Co., Inc. ("Respondent). The Complaint alleged in four (4) counts that Respondent had violated Section 409 of TSCA, 15 U.S.C. § 2689, and the federal regulations set forth at 40 C.F.R. Part 745, Subpart E, in connection with a lead-based paint renovation it performed in August of 2013 at a residential property located at 123 N. Lambert Street, Philadelphia, Pennsylvania. The Complaint proposed the assessment of a civil monetary penalty in the amount of $12,440.00 against Respondent for its violations.

In its currently pending Motion for Default Order, the Complainant alleges that Respondent is in default in this matter for failure to file an Answer to the Complaint. Complainant seeks issuance of a Default Order and Initial Decision holding Respondent in violation of TSCA and assessing a civil penalty in the amount of $12,440.00.

Based upon the record in this matter and the following Findings of Fact and Conclusions of Law, and Determination of Civil Penalty Amount, Complainant's Motion for Default Order is **GRANTED**. Pursuant to Rule 22.17(a) and (c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.17(a) and (c), Respondent is found to be in default for failure to file an Answer in the above-captioned matter, and is assessed a civil penalty in the amount of $12,440.00 for its violations of TSCA.

I. Findings of Fact and Conclusions of Law

Pursuant to 40 C.F.R. § 22.17(c) and based upon the entire record of the above-captioned matter, I make the following Findings of Fact and Conclusions of Law:

1. Complainant is the Director of the Land and Chemicals Division of the United States Environmental Protection Agency, Region III.
2. Respondent, Boston Design & Construction Co, Inc., is a Pennsylvania corporation, has its principle place of business located at 611 Mason Avenue, Drexel Hill, Pennsylvania 19026, and engages in, among other things, the performance of renovations.
3. On September 30, 2015, pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), Complainant filed with the EPA Region III Regional Hearing Clerk a four (4) count Administrative Complaint and Notice of Opportunity for a Hearing against Respondent in accordance with Consolidated Rules of Practice, 40 C.F.R. § 22.5. The Complaint alleged violations by the Respondent of the requirements of 40 C.F.R. Part 745, Subpart

E, and proposed the assessment of a civil monetary penalty in the amount of $12,440.00. The Complaint indicated that the penalty was calculated in consideration of the statutory factors set forth at Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), EPA's *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule: Renovation, Repair and Painting Rule; and the Lead-Based Paint Activities Rule* ("ERPP") (August 2010 and April 2013(revised)), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. § 19.4.

4. In 1992, Congress enacted the Residential Lead-Based Paint Hazard Reduction Act ("RLBPHRA"), Pub. L. 102-550, Title X, Oct. 28, 1992, 106 Stat. 3897, to address the prevalence of lead poisoning in American children and need to control exposure to lead-based paint hazards in residential housing. The RLBPHRA amended TSCA by adding Subchapter IV, Sections 401 through 412, 15 U.S.C. §§ 2681 through 2692, which provided authority to the Administrator of EPA to promulgate implementing regulations.
5. Pursuant to TSCA Section 402, 15 U.S.C. § 2682, on April 22, 2008, EPA promulgated the Renovation, Repair and Painting Rule, set forth at 40 C.F.R. Part 745, Subpart E (commonly referred to as the "RRP Rule") which provided requirements and procedures for the education of owners and occupants of certain residential buildings, accreditation of training programs, certification of renovators, and work practice standards for certain renovation activities involving lead-based paint.
6. Pursuant to Section 409 of TSCA, 15 U.S.C. § 2689, it is unlawful for any person to fail or refuse to comply with a provision of Subchapter IV, Sections 401 through 412 of TSCA, 15 U.S.C. §§ 2681 through 2692, or with any rule issued thereunder, including the requirements of 40 C.F.R. Part 745, Subpart E.

7. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), any person who violates a provision of Section 409 of TSCA, 15 U.S.C. § 2689, shall be liable for a civil penalty.
8. Pursuant to 40 C.F.R. § 745.82(a), the requirements of the RRP Rule apply to all renovations performed for compensation in target housing, except as described in 40 C.F.R. § 745.82(a)(1) – (3) and (b).
9. Pursuant to 40 C.F.R. § 745.83, the term "person" means, among other things, a corporation.
10. Pursuant to 40 C.F.R. § 745.83, the term "firm" means, among other things, a corporation.
11. 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, modification or repair of painted surfaces or painted components; the removal of building components; weatherization projects; and interim controls that disturb painted surfaces. The term "renovation" does not include minor repair and maintenance activities.
12. 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 surfaces.

13. Pursuant to 40 C.F.R. § 745.83, the term "painted surface" means a component surface covered in whole or in part with paint or other surface coatings.

14. 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 an EPA-authorized State or Tribal program.

15. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103, the term "target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

16. Pursuant to Section 401(14) of TSCA, 15 U.S.C. § 2681(14), and 40 C.F.R. §§ 745.103 and .223, the term "residential dwelling" means, among other things, a single-family dwelling, including attached structures such as porches and stoops.

17. At all times relevant to this proceeding, Respondent was a "person", "firm" and "renovator" as those terms are defined by 40 C.F.R. § 745.83.

18. On or about August 21-22, 2013, Respondent performed a renovation for compensation, including window replacement, at a residential building located at 123 N. Lambert Street in Philadelphia, PA. ("Lambert Street Home").

19. At the time of the renovation, the Lambert Street Home was a detached single family residential dwelling unit built prior to 1978 and was not used as "housing for the elderly," persons with disabilities, or as a "0-bedroom dwelling" as those terms are defined by 40 C.F.R. § 745.103.

20. The Lambert Street Home was, at all times relevant to this proceeding, a "residential dwelling" and "target housing" as those terms are defined by Section 401(14) and (17) of TSCA, 15 U.S.C. § 2681(14) and (17), and 40 C.F.R. § 745.103 and .223.

21. Respondent's renovation at the Lambert Street Home was a "renovation" and a "renovation for compensation in target housing" within the meaning of those terms as defined by 40 C.F.R. § 745.82 and .83.

Count I – Failure to Obtain Initial Firm Certification

22. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), prior to performing renovations in target housing, firms are required to obtain an initial certification from EPA in accordance with 40 C.F.R. § 745.89.

23. Respondent did not obtain from EPA an initial certification to perform renovations in target housing in accordance with 40 C.F.R. §§ 745.81(a)(2)(ii) and .89, prior to performing renovation work at the Lambert Street Home, on or about August 21-22, 2013.

24. Respondent received its initial lead-safe firm certification from EPA on or about September 11, 2013.

25. Respondent's failure to obtain an initial certification from EPA prior to performing renovations, on or about August 21-22, 2013, at the Lambert Street Home constitutes a violation of 40 C.F.R. § 745.81(a)(2)(ii) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count II – Failure to Ensure Certified Renovator Assigned to Renovation

26. Pursuant to 40 C.F.R. § 745.89(d)(2), firms are required to ensure that a certified renovator is assigned to each renovation performed by the firm and that the certified renovator discharges all of the responsibilities set forth in 40 C.F.R. § 745.90.

27. Respondent failed to ensure that a certified renovator was assigned to the August 21-22, 2013 renovation at the Lambert Street Home and that all of the responsibilities set forth in 40 C.F.R. § 745.90 were discharged.

28. Respondent's failure to assign a certified renovator to the August 21-22, 2013 renovation at the Lambert Street Home constitutes a violation of 40 C.F.R. § 745.89(d)(2) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count III – Failure to Distribute Information

29. Pursuant to 40 C.F.R. § 745.84(a)(1), no more than sixty (60) days before beginning renovation activities in any residential dwelling unit of target housing, firms are required to provide the owner of the unit with the EPA pamphlet entitled "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools." ("EPA Pamphlet")

30. Respondent failed to provide to the owner of the Lambert Street Home the EPA Pamphlet prior to commencing renovation activities at the Lambert Street Home on or about August 21-22, 2013.

31. Respondent's failure to provide to the owner of the Lambert Street Home the EPA Pamphlet prior to commencing renovations on or about August 21-22, 2013 constitutes a violation of 40 C.F.R. § 745.84(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count IV – Failure to Retain Records

32. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with Subpart E of 40 C.F.R. Part 745, including, where applicable, the records described in 40

C.F.R. § 745.86(b)(1) - (6), for a period of three years following completion of such renovations.

33. With regard to the August 21-22, 2013 renovation of the Lambert Street Home, Respondent failed to retain any documentation of compliance with the requirements of 40 C.F.R. § 745.85, including records indicating that a certified renovator was assigned to the project, as required by 40 C.F.R. § 745.86(b)(6).

34. Respondent failed to retain all records necessary to demonstrate compliance with Subpart E of 40 C.F.R. Part 745 for a period of three years following completion of the renovation at the Lambert Street Home as required by 40 C.F.R. § 745.86(a).

35. Respondent's failure to retain any documentation of compliance with the requirements of 40 C.F.R. Part 745, Subpart E, including records indicating that a certified renovator was assigned to the project, as required by 40 C.F.R. § 745.86(b)(6), constitutes a violation of 40 C.F.R. § 745.86(a) and Section 409 of TSCA, 15 U.S.C. § 2689.

36. Respondent's violations of Section 409 of TSCA, 15 U.S.C. § 2689, and the federal regulations set forth at 40 C.F.R. Part 745, Subpart E, as contained in Counts I through IV of the Complaint, renders Respondent liable for the assessment of a civil monetary penalty pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

37. The Consolidated Rules of Practice provide that, with regard to domestic corporations, service of a complaint shall be made upon 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. 40 C.F.R. § 22.5(b)(1)(ii)(A). Service of the complaint is to be effectuated either: personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery. 40

C.F.R. § 22.5(b)(1). Proof of service of a complaint is to be made by affidavit of the person making personal service, or by properly executed receipt, and is to be filed with the appropriate Regional Hearing Clerk immediately upon completion of service. 40 C.F.R. § 22.5(b)(1)(iii).

38. On September 30, 2015, Complainant served a true and correct copy of the Complaint via United Parcel Service's ("UPS") overnight delivery service with written verification of delivery and via the U.S. Postal Service's ("USPS") certified mail, return receipt requested service on Rodham A. Boston, President of Respondent's corporation, at Respondent's principle place of business, 611 Mason Avenue, Drexel Hill, Pennsylvania. The UPS written delivery verification record indicated that the Complaint "was delivered on 10/01/2015 at 12:18 p.m." and signed for by "Boston". The certified mail receipt was never returned to the Complainant, but the USPS online tracking information indicated that the package was delivered on Oct. 2, 2015 to the Drexel Hill address. (*Motion for Default* at 2 and 6/27/2016 *Proof of Service of Complaint*).

39. On June 7, 2016 Complainant elected to serve the Complaint on the Respondent for a second time due to Respondent's failure to file an Answer. Complainant again served the Complaint via UPS's overnight delivery service and USPS's certified mail, return receipt requested service. *(Motion for Default* at 2 and *Proof of Service of Complaint*). The UPS written delivery verification record for the second UPS mailing indicated that the Complaint "was delivered on 06/08/16 at 10:05 A.M." and signed for by "Rodman." The certified mail receipt for the second mailing was returned to Complainant and was "unsigned and undated." However, the USPS online tracking information for the second

certified mailing provided that the mailing was "Delivered, Left with Individual" on June 11, 2016 at the Drexel Hill address. (*Proof of Service* and *Motion for Default* at 2, n.1).

40. On June 27, 2016, Complainant filed a Proof of Service of the Complaint with the EPA Region III Regional Hearing Clerk in accordance with 40 C.F.R. § 22.5(b)(1)(iii).

41. Service of a complaint is complete when the return receipt is signed. 40 C.F.R. § 22.7(c).

42. I conclude that the Complaint was lawfully and properly served upon Respondent in accordance with the Consolidated Rules of Practice, 40 C.F.R. § 22.5(b)(1)(i) and (ii)(A).

43. Rule 22.15(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.15(c), provides that in order for a respondent to contest any material fact in a complaint, to contend that the proposed penalty, compliance order or Permit Action is inappropriate, or to contend that it is entitled to judgment as a matter of law, Respondent must file a written answer to the complaint with the appropriate Regional Hearing Clerk within thirty (30) days after service of the complaint.

44. Rule 22.17(a) of the Consolidated Rules of Practice, 40 C.F.R. § 22.17(a), provides that a party may be found in default upon failure to file a timely answer to a complaint and that default by a respondent constitutes, for purposes of the pending action, an admission of all facts alleged in the complaint and a waiver of a respondent's right to contest such factual allegations. When a Presiding Officer finds that a default has occurred, he or she "shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued." 40 C.F.R. § 22.17(c). A default order shall constitute an Initial Decision under the Consolidated Rules of Practice if it resolves all outstanding issues and claims in the proceeding. *Id.* "The relief proposed in the complaint or the motion for default shall be

ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act [particular statute authorizing the proceeding at issue.]" *Id.*

45. As of the date of this Default Order, Respondent has not filed an Answer to the Complaint or made a request for an extension of time to file an Answer.[1]

46. On December 29, 2016, Complainant filed a Motion for Default Order seeking issuance of a Default Order holding Respondent in default in this matter, finding that Respondent had violated TSCA as set forth in the four (4) counts in the Complaint and requesting the assessment of a civil penalty of $12,440.00 as proposed in the Complaint.

47. On December 29, 2016, Complainant served the Motion for Default Order on Rodham A. Boston, President of Respondent, at Respondent's offices located at 611 Mason Avenue, Drexel Hill, Pennsylvania via the U.S. Postal Service's certified mail, return receipt requested service and UPS's overnight delivery service.

48. Service of a motion is complete, *inter alia*, when placed in the custody of a reliable commercial delivery service. 40 C.F.R. § 22.7(c).

49. Complainant's Motion for Default Order was lawfully and properly served on Respondent in accordance with the Consolidated Rules of Practice, 40 C.F.R. § 22.7(c).

50. Respondent was required to file any response to the Motion for Default Order within twenty (20) days of service of the Motion.[2] 40 C.F.R. §§ 22.7(c) and 22.16(b).

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[1] The Complaint filed in this matter informed Respondent that "If Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged against the Respondent in this Complaint and a waiver of Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in the filing of a Motion for a Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings." (Complaint at 11.)

[2] 40 C.F.R. § 22.16(b) provides that a response to a written motion must be filed within fifteen (15) days after service of such motion. In 2017 the Consolidated Rules of Practice were revised and 40 C.F.R. § 22.7(c) was amended to provide that three (3) days, as opposed to the previous five (5) days, shall be added to the time allowed under the CROP for the filing of a responsive document when, *inter alia*, service is effectuated by commercial delivery service.

51. As of the date of this Order, Respondent has failed to respond to the Motion for Default Order, and such failure is deemed to be a waiver of any objection to the granting of the Motion. 40 C.F.R. § 22.16(b).

52. Having failed to file an Answer to the Complaint, I find Respondent to be in default. Based upon a review of the factual record and procedural history of this matter, I find that no "good cause" or basis exists as to why a default order should not be issued against Respondent.

II. Determination of Civil Penalty Amount

Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of Section 409 of TSCA, 15 U.S.C. § 2689, is liable to the United States for a civil penalty in an amount not to exceed $37,500 for each such violation that occurred on or after January 13, 2009.[3] In determining the amount of a civil penalty to be assessed for such a violation, EPA is required to 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 ("statutory factors"). Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).

The EPA Environmental Appeals Board has held that, "as the proponent of an order seeking civil penalties in administrative proceedings", the EPA bears the burden of proof as to the "appropriateness" of a civil penalty. *In re: Spitzer Great Lakes Ltd.*, 9 E.A.D. 302, 320 (EAB 2000). The "appropriateness" of a civil penalty is to be determined in light of the

[3] In 2008, EPA promulgated a Civil Monetary Penalty Inflation Adjustment Rule pursuant to the Debt Collection Improvement Act of 1996, increasing the statutory maximum penalty under Section 16 of TSCA. 73 Fed. Reg. 75340-75,346 (Dec. 11, 2008). On June 22, 2016, TSCA's statutory maximum was amended to $37,500.00 by Section 12 of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Pub. L. No. 114-182).

statutory factors set forth in TSCA Section 16(a)(2)(B), 15 U.S.C. § 2615(a)(2)(B). *Id.* (*citing*, *In re: New Waterbury, Ltd.*, 5 E.A.D. 529, 538 (EAB 1994)). However, although the EPA bears the burden of proof on the appropriateness of a civil penalty, "it does not bear a separate burden with regard to each of the statutory factors." *Spitzer Great Lakes*, 9 E.A.D. at 320. Rather, in order to meet its burden and establish a *prima facie* case, the EPA "must show that it considered each of the statutory factors and that the recommended penalty is supported by its analysis of those factors." *Id.* Having established its *prima facie* case, the burden then shifts to the Respondent to rebut the EPA's case by showing that the proposed penalty is not appropriate either because the EPA "failed to consider a statutory factor or because the evidence shows that the recommended calculation is not supported." *Id.* (*citing*, *New Waterbury*, 5 E.A.D. at 538-39, and *In re: Chempace Corp.*, 9 E.A.D. 119 (EAB, 2000)).

Under the Consolidated Rules of Practice, for purposes of calculating a civil penalty to be assessed in an Initial Decision, a Presiding Officer is required to determine the penalty based on the evidence in the record of the case and in accordance with any penalty criteria set forth in the underlying statute. 40 C.F.R. § 22.27(b). A Presiding Officer is also required to consider any applicable civil penalty guidelines. *Id.*

For purposes of calculating penalties in connection with cases involving violations of, *inter alia*, TSCA's Lead Renovation, Repair and Painting Rule, EPA issued guidance entitled the "Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule" ("*ERPP*") (August 2010 and revised April 2013). The ERPP sets forth EPA's analysis of the TSCA statutory factors as they apply to, *inter alia*, violations of the RRP Rule and provides a calculation methodology for applying the statutory factors to particular cases. (*ERPP* at 8).

Under the ERPP, there are two components of a penalty calculation: (1) determination of a "gravity-based penalty" based on the nature, circumstances, extent, and gravity of a respondent's violations, and (2) upward or downward adjustments of the gravity based penalty component in light of a respondent's ability to pay the penalty, effect of the penalty on Respondent's ability to continue to do business, any history of prior such violations, the degree of a respondent's culpability, and such other matters as justice may require.

The "gravity-based penalty" component is determined by considering the nature and circumstances of a violation, and the extent of harm that may result from a violation.

The "nature", or essential character, of a violation is characterized under the ERPP as being either: "chemical control,", "control-associated data gathering," or "hazard assessment." (*ERPP* at 14). A "chemical control" requirement is one which is "aimed at limiting exposure and risk presented by lead-based paint by controlling how lead-based paint is handled by renovators and abatement contractors." *Id.* A "hazard assessment" requirement is designed to provide owners and occupants of target housing, among others, with information that will allow them to weight and assess the risks presented by renovations and to take proper precautions to avoid the hazards. *Id.* The classification of the nature of a violation has a direct impact on the measures used to determine the "circumstance" and "extent" classifications of a violation under the ERPP. (*ERPP* at 14-15).

The "circumstance" level reflects the probability that an owner or occupant of target housing will suffer harm based on a particular violation. "[T]he greater the deviation from the regulations, the greater the likelihood that people will be uninformed about the hazards associated with lead-based paint and any renovations, that exposure will be inadequately controlled during renovations, or that residual hazards and exposures will persist after the

renovation/abatement work is completed." (*ERPP* at 15). Under the ERPP circumstance levels range from a 1 to 6, with a level 1or 2 having the highest probability of harm, levels 3 or 4 posing a medium probability of harm, and levels 5 and 6 posing a low probability of harm. (*ERPP* at 15-16). Appendix A of the ERPP sets forth the circumstance levels for particular violations. (*ERPP* at A-1 to A-10).

The extent level of a violation may be characterized as either major, significant, or minor, depending on the degree, range and scope of a violation's potential for childhood lead poisoning. (*ERPP* at 16-17.) "Major" violations pose the potential for serious damage to human health and the environment. "Significant" violations have the potential for significant damage to human health and the environment. Finally, "minor" violations pose the potential for lesser damage to human health and the environment. (*ERPP* at 16). For housing units occupied by a pregnant woman and/or a child of less than six years of age, a "major" classification is deemed appropriate. (*ERPP* at 17). For housing units occupied by a child between six years of age and eighteen years of age, the extent of harm for violations under the ERPP is "significant." *Id.* For housing units that are not occupied by children less than eighteen years of age, the appropriate extent of harm is 'minor'. *Id.* The ERPP provides that a "significant" extent factor may be used when the age of the youngest individual is not known. *Id.*

A. Complainant's Penalty Calculation

In the Complaint and its Motion for Default Order, Complainant proposed the assessment of a civil penalty in the amount of $12,440.00 against Respondent for its violations of TSCA.

In support of its Motion for Default, Complainant included the Declaration of Annie Hoyt, an environmental scientist and credentialed compliance officer with the Toxics Program Branch of the Land and Chemicals Division of U.S. EPA Region III since 2005. (*Hoyt*

Declaration at ¶ 1). In her capacities as a Compliance Officer, Ms. Hoyt calculated the penalty proposed in the Complaint. For purposes of calculating the penalty, Complainant took into account the TSCA statutory factors by utilizing the penalty calculation methodology set forth in the ERPP. (*Hoyt Declaration* at ¶ 5). Utilizing the ERPP, Complainant calculated the proposed penalty of $12,440.00 as follows:

Count I – Failure to Obtain Initial Certification from EPA
Nature – Chemical Control
Circumstance - Level 3a (medium probability of harm or impact to human health and the environment) (*ERPP* at A-3 (Section VII-1))
Extent – Minor (No individual younger than 18 resided in Target Housing at time of renovation)
GBP Penalty Matrix (*ERPP* at B-2) = $4,500.00

Count II – Failure to Ensure Certified Renovator
Nature – Chemical Control
Circumstance - Level 3a (medium probability of harm or impact to human health and the environment) (*ERPP* at A-3 (Section VII-5))
Extent – Minor (No individual younger than 18 resided in Target Housing at time of renovation)
GBP Penalty Matrix (*ERPP* at B-2) = $4,500.00

Count III – Failure to Provide EPA Pamphlet
Nature – Hazard Assessment
Circumstance - Level 1b (high probability of harm or impact to human health and the environment) (*ERPP* at A-1 (Section I-1))
Extent – Minor (No individual younger than 18 resided in Target Housing at time of renovation)
GBP Penalty Matrix (*ERPP* at B-2) = $2,840.00

Count IV – Failure to Retain Records
Nature – Controlled-Associated Data Gathering
Circumstance - Level 6a (low probability of harm or impact to human health and the environment) (*ERPP* at A-3 (Section VI-1))
Extent – Minor (No individual younger than 18 resided in Target Housing at time of renovation)
GBP Penalty Matrix (*ERPP* at B-2) = $600.00

(*Hoyt Declaration* at ¶¶ 12 - 27). Additionally, in light of available information, Complainant did not adjust the proposed penalty either upwards or downwards based on the statutory factors of Respondent's ability to pay the penalty, effect of the penalty on Respondent's ability to continue to do business, any history of prior such violations by Respondent, the degree of Respondent's culpability, and such other matters as justice may require. (*Hoyt Declaration* at ¶ 28 and *Motion for Default* at 11). More specifically, as part of its penalty calculation, the Complainant indicated that the Respondent did not have a history of prior violations of the RRP Rule or the PRE Rule. *Id.* Additionally, Complainant indicated that it possessed no information "from which to conclude that Respondent's level of culpability was other than negligent" with regard to its violations in this matter or that the penalty amount should be decreased in light of other factors as justice may require. (*Motion for Default* at 11). Finally, Complainant determined that Respondent did not incur any significant economic benefit as a result of its non-compliance with TSCA. (*Hoyt Declaration* at ¶ 28). As discussed in more detail, *infra*, Complainant also concluded that a downward adjustment was not warranted in light of Respondent's ability to pay the proposed penalty or the effect of the proposed penalty on the ability of the Respondent to continue in business.

B. Penalty Calculation

Rule 22.17(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.17(c), provides that, upon a finding of default by a Respondent, the relief proposed in a complaint or motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the statute authorizing the proceeding. Based upon the record of this case, an evaluation of the TSCA statutory factors with regard to Respondent and Respondent's violations and in consideration of the ERPP, I have determined that the $12,440.00 penalty amount

requested in the Motion for Default Order is appropriate. Additionally, I find that such a penalty amount is not clearly inconsistent with the record of this proceeding or with TSCA, the Residential Lead-Based Paint Hazard Reduction Act, or the RRP Rule.

The following sets forth my analysis with regard to an appropriate penalty for Respondent's violations of TSCA. Due to the fact that I find that the ERPP provides a rational, consistent and equitable methodology for applying the TSCA statutory factors to the facts and circumstances of a specific case, the following analysis utilizes the methodology set forth in the ERPP for purposes of applying the TSCA statutory factors to the specific facts of this case.

1. Gravity-Based Penalty Component (Nature, Extent, Circumstances and Gravity of Violations)

Count I

Nature of Violation - With regard to Respondent's violation of 40 C.F.R. § 745.81(a)(2)(ii), failing to obtain an initial certification from EPA, I conclude that it is appropriate to characterize this requirement as "Chemical Control" in nature in that an initial certification is aimed at limiting exposure to and the risk presented by lead-based paint by ensuring that only certified firms perform renovations utilizing appropriate work practices. Lead poisoning in children has been determined to present numerous deleterious health consequences including, "intelligent quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity and behavior problems," and, in severe cases may lead to seizures, coma and death. (*ERPP* at 14).[4] Lead in residential housing and child-occupied facilities remains the most important source of lead exposure for young children

[4] *See also* Lead- Clearance and Clearance Testing Requirements for the Renovation, Repair and Painting Program, 75 Fed. Reg. 25,038, 25,039-41 (May 6, 2010); Lead – Renovation, Repair, and Painting Program, 73 Fed. Reg. 21,692, 21,693-4 (April 22, 2008); and Lead – Renovation, Repair, and Painting Program, 71 Fed. Reg. 1588, 1590 (Jan. 10, 2006).

and pregnant women. *Id.* In order to address the problem of exposure to lead sources, like lead-based paint, EPA promulgated the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule to form a comprehensive lead-based paint regulatory program. (*EPRP* at 15). The purpose of the RRP Rule was to set forth requirements providing "for engineering controls [work-practice standards] to limit exposures to lead during renovation and abatements and the cleanup procedures to reduce exposures to lead following renovations and abatements." *Id.*

Circumstance Level – The record of this matter supports a finding that Respondent's failure to obtain an initial certification from EPA resulted in a medium probability of harm or impact to human health and the environment. Requiring renovation firms to obtain an initial certification is a central component of EPA's regulatory program in that it ensures that companies performing renovations have the necessary skills, training and knowledge of work-practice requirements to minimize the risk of exposure to lead. The Federal Register entry for the Final Rule for the RRP, provides that

> First, certification is an important tool for the Agency's enforcement program. To become certified, a firm acknowledges their responsibility to use appropriately trained and certified employees and follow the work practice standards set forth in the final rule. This is especially important under this final rule, since the certified renovator is not required to perform or be present during all of the renovation activities. Under these circumstances, it is important for the firm to acknowledge its legal responsibility for compliance with all of the final rule requirements, since the firm both hires and exercises supervisory control over all of its employees. Should the firm be found to violate any requirements, its certification can be revoked, giving the firm a strong incentive to ensure compliance by all employees.

(73 FR 21692, 21725-21726 (2008)).

Extent of Violation – Due to the fact that at the time of the renovation of the Lambert Street Home in August of 2013 no children under the age of six resided in or were present in the

premises, I conclude that Respondent's violation posed a low potential for harm, including, the potential for exposure to lead and potential for childhood lead poisoning. (*ERPP* at 16). Therefore, I find it is appropriate to classify Respondent's violation of 40 C.F.R. § 745.81(a)(2)(ii) as warranting an extent level of minor.

GBP Penalty for Count I – Based upon the aforesaid analysis, I conclude that a gravity-based penalty in the amount of $4,500.00 is appropriate for Respondent's violation of 40 C.F.R. § 745.81(a)(2)(ii), failure to obtain an initial certification from EPA.

Count II

Nature of Violation - With regard to Respondent's violation of 40 C.F.R. § 745.89(d)(2), failure of Respondent to ensure that a certified renovator was assigned to the renovation of the Lambert Street Home, I conclude that it is appropriate to characterize this requirement as "Chemical Control" in nature in that use of a certified renovator ensures that appropriate work practices are utilized during the course of a renovation, thereby limiting the exposure to and the risk presented by lead-based renovation activities.

Circumstance Level – The record of this matter supports a finding that Respondent's failure to utilize a certified renovator resulted in a medium probability of harm or impact to human health and the environment of the occupants of the Lambert Street Home. In its rulemaking for the RRP Rule, EPA determined that "renovation, repair, and painting activities disturb lead-based paint [and] create lead-based paint hazards." (73 FR 21,692, 21,699-21,700). As a result, EPA required that certain work-practice standards be utilized in connection with renovations of homes containing lead-based paint to minimize the potential for the creation of lead-based paint hazards. To ensure that these work-based practice standards are utilized on such renovations, EPA required in the RRP that firms utilize certified renovators.

> The certified renovator is responsible for ensuring compliance with the work practice standards of this final regulation. The certified renovator must perform or direct certain critical tasks during the renovation, such as posting warning signs, establishing containment of the work area, and cleaning the work area after the renovation. These and other renovation activities may be performed by workers who have been provided on-the-job training in these activities by a certified renovator. However, the certified renovator must be physically present at the work site while signs are being posted, containment is being established, and the work area is being cleaned after the renovation to ensure that these tasks are performed correctly.

(73 FR 21692, 21703 (2008)). By failing to have a certified renovator present during the renovation of the Lambert Street Home, Respondent failed to ensure that appropriate work-practices were utilized during the course of the renovation and, thereby, created a medium probability of harm to human health and the environment.

Extent of Violation – As previously discussed, due to the fact that at the time of the renovation of the Lambert Street Home in August of 2013 no children under the age of six resided in or were present in the premises, I conclude that Respondent's violation posed a low potential for harm and warrants an extent level of minor.

GBP Penalty for Count II – Based upon the aforesaid analysis, I conclude that a gravity-based penalty in the amount of $4,500.00 is appropriate for Respondent's violation of 40 C.F.R. § 745.89(d)(2), failure to utilize a certified renovator.

Count III

Nature of Violation - With regard to Respondent's violation of 40 C.F.R. § 745.84(a)(1), failure to provide EPA's Pamphlet prior to commencing renovations at the Lambert Street Home, I conclude that it is appropriate to characterize this requirement as "Hazard Assessment" in nature in that distribution of the EPA Pamphlet is directly intended to provide owners and occupants of target housing, among others, with information that will allow them to assess the risks presented by renovations and to take proper precautions to avoid exposure and hazards.

Circumstance Level – The record of this matter supports a finding that Respondent's failure to distribute to the owners of the Lambert Street Home the EPA Pamphlet prior to the renovation of the home resulted in a high probability of harm or impact to human health and the environment. The EPA Pamphlet "contains information on the health effects of lead, how exposure can occur, and steps that can be taken to reduce or eliminate the risk of exposure during various activities in the home." (71 F.R. 1588, 1592-93). As a result, the EPA Pamphlet allows those seeking out renovation services to make educated decisions about whether to undertake the renovation activities in their residences and to adequately evaluate the risks such activities may pose to the health well-being of the residence's occupants, especially young children and pregnant women. By denying such information to the owners and occupants of the Lambert Street Home, Respondent created a situation that posed a high probability of harm to human health.

Extent of Violation – As previously discussed, due to the fact that at the time of the renovation of the Lambert Street Home in August of 2013 no children under the age of six resided in or were present in the premises, I conclude that Respondent's violation posed a low potential for harm and warrants an extent level of minor.

GBP Penalty for Count III – Based upon the aforesaid analysis, I conclude that a gravity-based penalty in the amount of $2,840.00 is appropriate for Respondent's violation of 40 C.F.R. § 745.84(a)(1), failure to distribute the EPA Pamphlet prior to performance of a renovation.

Count IV

Nature of Violation - With regard to Respondent's violation of 40 C.F.R. § 745.86(a), failure to retain renovation-related records for a period of three years following completion of a renovation, I conclude that it is appropriate to characterize this requirement as "Control-

Associated Data Gathering" in nature in that maintenance of such records is intended, among other things, to enable regulators, like EPA, to determine if appropriate work-practice standards were undertaken in connection with lead-based paint renovation activities.

Circumstance Level – The record of this matter supports a finding that Respondent's failure to maintain renovation records posed a low probability of harm or impact to human health and the environment. Although important to the EPA regulatory program concerning the control of lead hazards, the maintenance of such records is intended to serve more as a control and compliance mechanism for the regulatory program, as opposed to a work practice to limit the creation of lead hazards in the field.

Extent of Violation – As previously discussed, due to the fact that at the time of the renovation of the Lambert Street Home in August of 2013 no children under the age of six resided in or were present in the premises, I conclude that Respondent's violation posed a low potential for harm and warrants an extent level of minor.

GBP Penalty for Count III – Based upon the aforesaid analysis, I conclude that a gravity-based penalty in the amount of $600.00 is appropriate for Respondent's violation of 40 C.F.R. § 745.86(a), failure to retain renovation records for the three years following completion of a renovation.

The total Gravity-Based Penalty component for Counts I through IV is $12,440.00.

2. Upward or Downward Adjustments (Violator's ability to pay and continue to do business, history of prior violations, degree of culpability and such other matters as justice may require)

Complainant does not seek and I find that the record of this matter does not warrant any upward or downward adjustment to the gravity-based penalty with respect to the factors of

Respondent's history of prior violations, Respondent's culpability or such other matters as justice may require. As previously noted, the Respondent does not have a history of prior violations of the RRP Rule, and no evidence exists from which to conclude that Respondent's actions exhibit a heightened or decreased level of culpability in this matter. Similarly, Complainant indicates in its Motion that it determined that Respondent did not incur any significant economic benefit as a result of its non-compliance with TSCA. (*Hoyt Declaration* at ¶ 28). Finally, I find no evidence in the record of this case to warrant either an upward or downward adjustment to the proposed penalty in light of other matters as justice may require.

With respect to Respondent's ability to pay the proposed penalty and ability to continue to do business, I find that an adjustment to the gravity-based penalty component is not warranted.

Prior Agency decisions have noted that EPA's ability to gather financial information about a respondent is limited at the outset of a case, and a respondent is in the best position to provide relevant financial records about its own financial condition. *Spitzer Great Lakes,* 9 E.A.D. at 321; and *New Waterbury*, 5 E.A.D. at 541. Therefore, the Complainant may presume that the Respondent has an ability to pay the penalty until Respondent puts its ability to pay at issue. *New Waterbury*, 5 E.A.D. at 541; *Spitzer Great Lakes*, 9 E.A.D. at 321; *In re: CDT Landfill Corp.*, 11 E.A.D. 88, 122 (EAB 2003); and *In re: Donald Cutler*, 11 E.A.D. 622, 632 (EAB 2004). If a respondent fails to properly notify EPA that it plans to assert an inability to pay claim or fails to produce supporting financial documentation, then the Presiding Officer has the discretion to waive consideration of the ability to pay factor. *Spitzer Great Lakes*, 9 E.A.D. at 321; and *New Waterbury*, 5 E.A.D. at 542. In those situations when a respondent places its ability to pay a penalty at issue, EPA is "required to present some evidence to show that it considered the respondent's ability to pay a penalty as part of the Region's *prima facie* case that

a proposed penalty is appropriate taking all penalty criteria into consideration." *In re: JHNY, Inc., a/k/a Quin-T Technical Papers and Boards*, 12 E.A.D. 372, 398 (EAB 2005) (*citing*, *New Waterbury*, 5 E.A.D. at 542). However, as the Environmental Appeals Board noted in *New Waterbury*,

> The Region need not present any specific evidence to show that the respondent can pay or obtain funds to pay the assessed penalty, but can simply rely on some general financial information regarding the respondent's financial status which can support the inference that the penalty assessment need not be reduced. Once the respondent has presented specific evidence to show that despite its sales volume or apparent solvency it cannot pay any penalty, the Region as part of its burden of proof in demonstrating the "appropriateness" of the penalty must respond either with the introduction of additional evidence to rebut the respondent's claim or through cross examination it must discredit the respondent's contentions.

New Waterbury, 5 E.A.D. at 542-543.

In this proceeding, the record reveals that, for purposes of calculating the proposed penalty, the Complainant adequately considered the limited information that it had available regarding the Respondent's financial status and concluded that no upward or downward adjustment to the penalty was warranted. (*Hoyt Declaration* at § 28). Complainant indicates in its Motion that Respondent "voluntarily" provided to EPA during the course of settlement negotiations corporate tax returns for tax years 2009 through 2013.[5] (*Motion for Default* at 11). However, the tax returns provided by Respondent did not include attachments, schedules or other supporting documentation. *Id.* Additionally, the Respondent did not supply tax returns for tax years 2014 through 2016. *Id.* As part of its Motion for Default Order, Complainant included the Declaration of Craig Yussen, a chemical engineer and compliance officer with EPA Region III.

[5] Complainant did not disclose the actual contents of the tax returns as part of its Motion for Default. Rather, Complainant referenced the tax returns for purposes of discussing the ABEL analysis it performed to determine Respondent's ability to pay the proposed penalty.

Mr. Yussen utilized the Agency's Ability-to-Pay ("ABEL") computer model for corporations[6] to analyze the aforementioned financial information. (*Yussen Declaration* at ¶ 1, 2, 4, and 5). Mr. Yussen noted in his Declaration:

> I entered data into the ABEL model from Respondent's federal tax returns for 2009, 2010, 2011, 2013 [sic] and 2013. This information was incomplete as I did not have any attachments to the returns, specifically, Statement 1 referenced in Line 19 ("Other deductions") of each return. I also did not have Schedule L ("Transactions with Interested Persons") and Schedule M ("Noncash Contributions") for any year. ABEL requires data input from each of these schedules to run a complete analysis. I also had no financial information at all for years 2014, 2015 or 2016.

(*Yussen Declaration* at ¶ 5). Although financial information concerning the Respondent was limited, Mr. Yussen was still able to complete an ABEL analysis which indicated that, "based on the cash flow Respondent expected to generate from 2014-2019, there was a 59% probability that Respondent could afford to pay a penalty of $12,440 after meeting pollution control expenditures of zero." (Yussen Declaration at ¶ 6). In light of this analysis, Complainant determined that an adjustment to the gravity-based penalty was not warranted.

I find that Complainant's analysis of the Respondent's financial consideration was reasonable and appropriate in light of its obligation with regard to the TSCA statutory factors and based upon the available financial information concerning the Respondent. The Complainant utilized the penalty and financial computer model that has been selected by EPA for purposes of evaluating the ability of corporations, like Respondent, to pay civil penalties. Information concerning Respondent's financial situation rested primarily with the Respondent. However, Respondent elected to make available to Complainant only limited and incomplete financial information to support a claim of inability to pay the proposed penalty. Additionally,

[6] The ABEL model is a screening tool that assists EPA in assessing a corporation's or partnership's ability to afford a civil penalty, new investments in pollution control equipment, non-Superfund environmental cleanup costs, and Superfund cleanup costs. ABEL evaluates a firm's claim regarding its ability to pay for such expenditures. (ABEL Users' Manual at 1-1 and 1-2 (April 2003)).

it is important to note that in the Complaint, the Complainant specifically advised the Respondent that,

> EPA will consider, among other factors, Respondent's ability to pay to adjust the proposed civil penalty assessed in this Complaint. The proposed penalty reflects a presumption of Respondent's ability to pay the penalty and to continue in business based on the size of business and the economic impact of the proposed penalty on the business. The burden of raising and demonstrating an inability to pay rests with Respondent. In addition, to the extent that facts and circumstances unknown to Complainant at the time of the issuance of the Complaint become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in the Complaint.

(Complaint at 10). Despite limited information, EPA was able to perform an ABEL analysis. The analysis indicated a greater than 50% probability that Respondent could afford to pay the penalty. Therefore, I conclude that Complainant adequately considered Respondent's ability to pay and ability to continue in business in reference to the proposed penalty and that a downward adjustment to the penalty is not warranted in this matter.

Therefore, I conclude that, based upon the TSCA statutory factors and the record of this matter, the proposed penalty of $12,440.00 is an appropriate civil penalty to be assessed against the Respondent for its violations of TSCA. Additionally, I conclude that the proposed penalty of $12,440.00 is not clearly inconsistent with the record of this proceeding or with TSCA, the Residential Lead-Based Paint Hazard Reduction Act, or the RRP Rule.

ORDER

Pursuant to the Consolidated Rules of Practice, including 40 C.F.R. § 22.17, Complainant's Motion for Default is **GRANTED** and Respondent is **ORDERED** as follows:

1. Respondent, Boston Design & Construction Co., Inc., is assessed a civil penalty in the amount of $12,440.00 and ordered to pay the civil penalty as directed in this Order.
2. Respondent shall pay the civil penalty to the "United States Treasury" within thirty (30) days after this Default Order has become final. Payment by Respondent shall reference Respondent's name and address and the EPA Docket Number of this matter. Respondent may use any of the following means for purposes of paying the penalty:
    a. All payments made by check and sent by regular U.S. Postal Service Mail shall be addressed and mailed to:

        United States Environmental Protection Agency
        Fines and Penalties
        Cincinnati Finance Center
        P.O. Box 979077
        St. Louis, MO 63197-9000

        Contact: Customer Service (513-487-2091)

    b. All payments made by check and sent by private commercial overnight delivery service shall be addressed and mailed to:

        United States Environmental Protection Agency
        Cincinnati Finance Center
        Government Lockbox 979077
        1005 Convention Plaza
        Mail Station SL-MO-C2-GL
        St. Louis, MO 63101

        Contact: 314-418-1818

    c. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

United States Environmental Protection Agency
Cincinnati Finance Center
MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

d. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

e. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

U.S. Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: 866-234-5681

f. On-Line Payment Option: WWW.PAY.GOV/paygov/

Enter "sfo 1.1" in the search field. Open and complete the form.

g. Additional payment guidance is available at:

https://www2.epa.gov/financial/makepayment

3. At the same time that payment is made, Respondent shall mail copies of any corresponding check, or written notification confirming any electronic fund transfer or online payment, as applicable to:

   Regional Hearing Clerk
   U.S. Environmental Protection Agency
   Region III (Mail Code 3RC00)
   1650 Arch Street
   Philadelphia, PA 19103-2029

   and

   Janet E. Sharke
   Senior Assistant Regional Counsel
   U.S. Environmental Protection Agency
   Region III (Mail Code 3RC50)
   1650 Arch Street
   Philadelphia, PA 19103-2029

4. In the event that Respondent fails to pay the civil penalty as directed above, this matter may be referred to a United States Attorney for recovery by action in the appropriate United States District Court.
5. Pursuant to the Debt Collection Act, 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim.
6. This Default Order constitutes an Initial Decision, as provided in 40 C.F.R. §§ 22.17(c) and 22.27(a). This Initial Decision shall become a Final Order forty-five (45) days after it is served upon the Complainant and Respondent and without further proceedings unless: (1) a party moves to reopen a hearing; (2) a party appeals this Initial Decision to the EPA Environmental Appeals Board within thirty (30) days of service of the Initial Decision, in accordance with 40 C.F.R.§ 22.30; (3) a party moves to set aside the Default

Order that constitutes this Initial Decision, or; (4) the Environmental Appeals Board elects to review the Initial Decision on its own initiative. See 40 C.F.R. § 22.27(c).

7. Under 40 C.F.R. § 22.30, any party may appeal this Order by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board within thirty (30) days after this Initial Decision is served upon the parties.

IT IS SO ORDERED.

Feb. 28, 2018
Date

Joseph J. Lisa
Regional Judicial Officer/Presiding Officer
U.S. EPA Region III

CERTIFICATE OF SERVICE

This Initial Decision and Default Order (U.S. EPA Docket No. TSCA-03-2015-0258) was served on FEB 28 2018 by the manner indicated below upon the following:

COMPLAINANT:

Via Hand Delivery

Janet E. Sharke
Senior Assistant Regional Counsel
United States Environmental Protection Agency
Mail Code (3RC50)
Philadelphia, PA 19103-2029

RESPONDENT:

Via Certified Mail/Return Receipt Requested and UPS Overnight Delivery Service

Certified Mail No. 7004 2510 0004 7902 5123

UPS Tracking No. 1ZA43 F71 24 9156 6224

Rodham A. Boston, Jr.
President
Boston Design & Construction Co., Inc.
611 Mason Avenue
Drexel Hill, PA 19026

ENVIRONMENTAL APPEALS BOARD:

Via EPA Pouch Mail

Clerk of the Board
Environmental Appeals Board
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Bevin Esposito
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (3RC00)