

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

RECEIVED
2017 MAR 17 AM 8:43
TOXIC SUBSTANCES CONTROL ACT

In the matter of:	:	Administrative Complaint
	:	
RFN Enterprise, Inc.	:	U.S. EPA Docket No.
428 Foxridge Drive	:	TSCA-03-2017-0106
Leesburg, VA 20175	:	
Respondent,	:	Proceeding Under Section 16(a) of the
	:	Toxic Substances Control Act
5338 Reisterstown Rd.	:	15 U.S.C. § 2615(a).
Baltimore, MD 21215	:	
Target Housing.	:	

ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR A HEARING

I. INTRODUCTION

1. This Administrative Complaint and Notice of Opportunity for a Hearing (“Complaint”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency, (“EPA” or the “Agency”) by Sections 16(a) and 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2615(a) and 2689, the federal regulations set forth at 40 C.F.R. Part 745, Subpart E, 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, a copy of which is enclosed with this Complaint. The Administrator has delegated this authority, under TSCA, to the Regional Administrators, and this authority has been further delegated in the U.S. EPA Region III to, *inter alia*, the Director of the

Land and Chemicals Division (“Complainant”), pursuant to EPA Region III Delegation No. 12-2-A. The Respondent in this action is RFN Enterprise, Inc. (the “Respondent”). This Complaint alleges violations by the Respondent of 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 - *Residential Property Renovation*, in connection with a renovation conducted at 5338 Reierstown Rd., Baltimore, MD 21215.

II. JURISDICTION, BACKGROUND AND DEFINITIONS

2. EPA and the Office of Administrative Law Judges have jurisdiction over this matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689, 40 C.F.R. § 745.87, and 40 C.F.R. §§ 22.1(a)(5) and 22.4.
3. 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. The RLBPHRA addresses the need to control exposure to lead-based paint hazards in residential housing. The RLBPHRA amended TSCA by adding *Subchapter IV - Lead Exposure Reduction*, Sections 401 through 412 of TSCA, 15 U.S.C. §§ 2681 through 2692, which provides authority for the Administrator of EPA to promulgate implementing regulations.
4. Pursuant to Section 409 of TSCA, 15 U.S.C. § 2689, it is unlawful for any person to fail or to refuse to comply with any provision of *Subchapter IV – Lead Exposure Reduction* of TSCA, or with any rule issued thereunder.
5. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), any person who violates Section 409 of TSCA, 15 U.S.C. § 2689 shall be liable for a civil penalty.

6. EPA promulgated 40 C.F.R. Part 745, Subpart E - *Residential Property Renovation* regulations (“RRP Rule”) under the authority of *Subchapter IV - Lead Exposure Reduction* in rulemaking actions published on June 1, 1998 (63 Fed. Reg. 29919).
7. Pursuant to 40 C.F.R. § 745.82, 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) and (b).
8. Pursuant to 40 C.F.R. § 745.82(a), the requirements of the RRP Rule do not apply to renovations in target housing where a determination has been made that the components affected by the renovation are free of lead-based paint.
9. Pursuant to 40 C.F.R. § 745.82(b), the information distribution requirements of 40 C.F.R. § 745.84 do not apply to renovations that are emergency renovations.
10. Pursuant to 40 C.F.R. § 745.83, the definitions in 40 C.F.R. § 245.103 also apply to the RRP Rule.
11. Pursuant to 40 C.F.R. § 745.83, the term “person” means 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. Pursuant to 40 C.F.R. § 745.83, the term “firm” means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

13. 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 (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, planning thresholds to install weather stripping), and interim controls that disturb painted surfaces. The term renovation does not include minor repair and maintenance activities.

14. Pursuant to 40 C.F.R. § 745.83, the term “minor repair and maintenance activities” means activities, including minor heating, ventilation or air condition work, electrical work, and plumbing, that disrupt six (6) square feet or less of painted surface per room for interior activities or twenty (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.

15. Pursuant to 40 C.F.R. § 745.103, “housing for the elderly” means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

16. 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.
17. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), the term “target housing” means any housing constructed prior to 1978, except that the term “target housing” does not include housing for the elderly, housing for 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.
18. The State of Maryland does not have a renovation program that is authorized under 40 C.F.R. Part 745, Subpart Q.

III. GENERAL ALLEGATIONS

19. At all times relevant to the violations alleged in this Complaint, RFN Enterprise, Inc. (“RFN”) was incorporated in Virginia.
20. The Respondent is and, at the time of the violations alleged herein, was a firm as defined in 40 C.F.R. § 745.83
21. Within the time period between August 2012 and April 2013, the Respondent entered into a contract with the owner of the house at 5338 Reisterstown Road (the “House”) to renovate the House for compensation.
22. The renovation work primarily consisted of the construction and painting of walls.
23. The House was built prior to 1978, and is a two-story residence.

24. On April 1, 2013, an inspector from the Maryland Department of the Environment (“MDE”) observed renovations of the House (“April 1 Inspection”).
25. During the April 1 Inspection, the MDE inspector observed conditions both inside and outside the House.
26. The House is a single family residence.
27. During the April 1 Inspection of the House, the MDE inspector took photographs of the interior and exterior of the House (“MDE Photographs”).
28. At the time of the April 1 Inspection, renovators, at the direction and on behalf of the Respondent, had disturbed and/or removed paint from the interior of the House.
29. During the April 1 Inspection, the MDE inspector, by phone, talked to Jose Nataren of RFN about complying with RRP Rule’s work practice standards at the House.
30. At the time of the April 1 Inspection, Respondent had not posted the warning signs at the House prior to the start of the renovation.
31. At the time of the April 1 Inspection, the Respondent had failed to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material with plastic sheeting or other impermeable material during the renovation of the House as required by 40 C.F.R. § 745.85(a)(2)(i)(D).
32. At the time of the April 1 Inspection, the Respondent had failed to contain waste from renovation activities in order to prevent the release of dust and debris before the Respondent removed the waste from the work area at the House for storage or disposal as required by 40 C.F.R. § 45.85(a)(4)(i).

33. At the April 1 Inspection, the Respondent had not removed all objects from the work area, including furniture, rugs, and window coverings, or covered them with plastic sheeting or other impermeable material., as required by 40 C.F.R. § 745.85(a)(2)(i)(A).
34. At the April 1 Inspection, the Respondent had failed to cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable materials during the renovation of the House, as required by 40 C.F.R. § 745.85(a)(2)(i)(B).
35. The Respondent had not obtained certification from EPA to perform renovations at target housing prior to performing renovation at the House, as required by 40 C.F.R. § 745.81(a)(2)(ii) and 40 C.F.R. § 745.89.
36. On May 22, 2013, EPA conducted an inspection at the home office of RFN, at 428 Foxridge Dr., Leesburg, VA 20175 to determine the Respondent's compliance with the RRP Rule ("May 22 Inspection").
37. At all times relevant to the violations alleged in this Complaint, Frances Nataren was President of RFN and Jose Nataren was Vice President of RFN.
38. During the May 22 Inspection, the EPA inspector met with both Jose and Frances Nataren.
39. During the May 22 Inspection, Jose and Frances Nataren stated to the EPA inspector that RFN had not obtained certification from EPA to perform renovations at target housing.
40. At the time of the May 22 Inspection, the House was not "housing for the elderly" and did not qualify as "0-bedroom dwelling[s]" as those terms are defined by 40 C.F.R. § 745.103.
41. At the time of the May 22 Inspection, the House was not for persons with disabilities.

42. At the time of the May 22 Inspection, the Respondent did not have either the written acknowledgement required by 40 C.F.R. § 745.84(a)(1)(i) or the certificate of mailing required by 40 C.F.R. § 745.84(a)(1)(ii) showing that it had provided EPA's Lead Hazard Information Pamphlet to the owner of the House, as required by 40 C.F.R. §§ 745.86(b)(2) and (3).
43. At the time of the May 22 Inspection, the Respondent did not have records documenting that the Respondent complied with 40 C.F.R. § 745.85(a)'s requirements for the performance of lead-safe work practices and 40 C.F.R. § 745.85(b)'s requirements for the performance of the post-renovation cleaning, as required by 40 C.F.R. § 745.86(b)(6).
44. At all times relevant to this Complaint, the House was "target housing" as such term is defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17).
45. During the May 22 Inspection, the EPA inspector obtained from the Respondent a contract for renovation of the House that indicated the Respondent had received payment for the renovation of the House.
46. The renovations of the House, including the disturbing and/or removal of paint from the interior of the House, were not "minor repair and maintenance activities," as defined by 40 C.F.R. § 745.83.
47. The contract and MDE Photographs of the House demonstrate that the renovations of the House, including the disturbing and/or removal of paint from the interior of the House, were not minor repair and maintenance activities,
48. The renovation of the House was not part of an abatement, as defined by 40 C.F.R. § 745.223.

49. Prior to the renovation, the components of the House affected by the renovation were not determined to be free of lead-based paint, as described in 40 C.F.R. § 745.82(a).
50. The renovation of the House was not an emergency renovation., as defined by 40 C.F.R. § 745.82(b).
51. The disturbing and/or removal of paint from the interior of the House was a “renovation” as such term is defined by 40 C.F.R. § 745.83.
52. Because the renovation of the House was a “renovation performed for compensation in target housing” that was not excepted under 40 C.F.R. §§ 745.82(a) or (b), Respondent was required to meet the obligations of 40 C.F.R. Part 745, Subpart E.

IV. VIOLATIONS

Count I – Failure to Obtain Initial Firm Certification

53. The foregoing allegations contained in this Complaint are incorporated by reference as though fully set forth herein.
54. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii) and 40 C.F.R. § 745.89(a)(1), prior to performing renovations at target housing for compensation, firms are required to obtain certification from EPA under § 745.89(a)(1).
55. The Respondent was not EPA certified under 40 C.F.R. § 745.89(a)(1) prior to or at the time of performing renovations at the House, as described herein.
56. The Respondent’s failure to obtain certification prior to or at the time of performing renovations at the House constitutes a violation of 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a)(1), and Section 409 of TSCA, 15 U.S.C. § 2689.

Count II – Failure to Make Available All Records Demonstrating the Performance of All Lead-Safe Work Practices

57. The foregoing allegations contained in this Complaint are incorporated by reference as though fully set forth herein.
58. Pursuant to 40 C.F.R. § 745.86, firms performing renovations on target housing are required to retain for three years following completion of the renovation and, if requested, make available to EPA all records necessary to document that the renovator(s) complied with the requirements of 40 C.F.R. § 745.85, including performance of the lead-safe work practices described in 40 C.F.R. § 745.85(a) and the post-renovation cleaning described in 40 C.F.R. § 745.85(b).
59. During the time of the May 22 Inspection, upon a request from the EPA inspector, the Respondent failed to make available to EPA all records demonstrating the performance of all lead-safe practices described in 40 C.F.R. § 745.85(a) and the post-renovation cleaning described in 40 C.F.R. § 745.85(b) during the 2013 renovation of the House.
60. The Respondent's failure to make available to EPA all records necessary to document that the renovator complied with the requirements of 40 C.F.R. § 745.85 with respect to the renovation of the House is a violation of 40 C.F.R. § 745.86 and Section 409 of TSCA, 15 U.S.C. § 2689.

Count III – Failure to Post Warning Signs

61. The foregoing allegations contained in this Complaint are incorporated by reference as though fully set forth herein.

62. Pursuant to 40 C.F.R. § 745.85(a)(1), firms must post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside the work area, with an exception not relevant to this matter.
63. At the time of the April 1 Inspection, after renovations had begun, the Respondent had not posted the warning signs as required by 40 C.F.R. § 745.85(a)(1).
64. The Respondent's failure to post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside the work area is a violation of 40 C.F.R. § 745.85(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count IV – Failure to Remove All Objects from the Work Area or to Cover Them

65. The foregoing allegations contained in this Complaint are incorporated by reference as though fully set forth herein.
66. Pursuant to 40 C.F.R. § 745.85(a)(2), before beginning a renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed.
67. 40 C.F.R. § 745.85(a)(2) enumerates five separate and independent requirements imposed on firms performing interior renovations so that no dust or debris leaves the work area during the renovation.
68. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(A), firms performing interior renovations must remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material.

69. At the time of the April 1 Inspection, after renovations had begun, the Respondent had not removed all objects from the work area, including furniture, rugs, and window coverings, or covered them with plastic sheeting or other impermeable material as required by 40 C.F.R. § 745.85(a)(2)(i)(A).

70. The Respondent's failure to remove all objects from the work area or cover them with plastic sheeting or other impermeable material is a violation of 40 C.F.R. § 745.85(a)(2)(i)(A) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count V – Failure to Close All Ducts Opening in the Work Area

71. The foregoing allegations contained in this Complaint are incorporated by reference herein as though fully set forth in length.

72. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(B), firms performing interior renovations must close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable materials.

73. At the time of the April 1 Inspection, after renovations had begun, the Respondent had failed to cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable materials during the renovation of the House as required by 40 C.F.R. § 745.85(a)(2)(i)(B).

74. The Respondent's failure to cover all ducts with taped-down plastic sheeting or other impermeable materials is a violation of 40 C.F.R. § 745.85(a)(2)(i)(B) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count VI – Failure to Close All Windows and Doors in the Work Area

75. The foregoing allegations contained in this Complaint are incorporated by reference herein as though fully set forth in length.
76. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(C), firms performing interior renovations must close windows and doors in the work area and cover them with a plastic sheeting or other impermeable material.
77. At the time of the April 1 Inspection, after renovations had begun, the Respondent had not closed all windows and doors or covered them with plastic sheeting or other impermeable material during the renovation of the House as required by 40 C.F.R. § 745.85(a)(2)(i)(C).
78. The Respondent's failure to close windows and doors in the work area and cover them with plastic sheeting or other impermeable material is a violation of 40 C.F.R. § 745.85(a)(2)(i)(C) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count VII – Failure to Cover the Floor Surface

79. The foregoing allegations contained in this Complaint are incorporated by reference herein as though fully set forth in length.
80. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(D), firms performing interior renovations must 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.
81. At the time of the April 1 Inspection, after renovations had begun, the Respondent had failed to cover the floor surface, including installed carpet, with taped-down plastic

sheeting or other impermeable material with plastic sheeting or other impermeable material during the renovation of the House as required by 40 C.F.R. § 45.85(a)(2)(i)(D).

82. The Respondent's failure to cover the floor surface with taped-down plastic sheeting or other impermeable material within the work area is a violation of 40 C.F.R.

§ 745.85(a)(2)(i)(D) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count VIII - Failure to Contain Waste

83. The foregoing allegations contained in this Complaint are incorporated by reference as though fully set forth herein.

84. Pursuant to 40 C.F.R. § 745.85(a)(4)(i), firms conducting renovations are required to contain waste from renovation activities in order to prevent the release of dust and debris before the waste is removed from the work area for storage or disposal.

85. At the time of the April 1 Inspection, after renovations had begun, the Respondent had failed to contain waste from renovation activities in order to prevent the release of dust and debris before the Respondent removed the waste from the work area at the House for storage or disposal as required by 40 C.F.R. § 745.85(a)(4)(i).

86. The Respondent's failure to contain waste from renovation activities in order to prevent the release of dust and debris before the Respondent removed the waste from the work area at the House for storage or disposal is a violation of 40 C.F.R. § 745.85(a)(4)(i) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count IX - Failure to Obtain a Written Acknowledgement of Provision of EPA's Lead Hazard Information Pamphlet or Written Certification of Mailing of the Pamphlet.

87. The foregoing allegations contained in this Complaint are incorporated by reference herein as though fully set forth at length.
88. 40 C.F.R. § 745.84(a)(1) requires that, no more than 60 days before beginning a renovation of any residential dwelling unit of target housing, the firm performing the renovation must provide EPA's Lead Hazard Information Pamphlet to the owner of the unit that is undergoing renovations.
89. In addition, 40 C.F.R. § 745.84(a) (1) requires renovators to obtain either a written acknowledgement that the owner of the dwelling unit was provided with EPA's Lead Hazard Information Pamphlet (40 C.F.R. § 745.84(a)(1)(i)) or a certificate of mailing the pamphlet to the owner at least seven days prior to the renovation (40 C.F.R. § 745.84(a)(1)(ii)).
90. The dwelling unit in this matter consists of the entire house because it is a single family residence.
91. The Respondent did not obtain either the written acknowledgement required by 40 C.F.R. § 745.84(a)(1)(i) or the certificate of mailing required by 40 C.F.R. § 745.84(a)(1)(ii) showing that it had provided EPA's Lead Hazard Information Pamphlet to the owner of the House.
92. Respondent's failure to obtain either the written acknowledgement required by 40 C.F.R. § 745.84(a)(1)(i) or the certificate of mailing required by 40 C.F.R. § 745.84(a)(1)(ii) is a violation of 40 C.F.R. § 745.84(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

V. PROPOSED CIVIL PENALTY

93. 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, shall be liable to the United States for a civil penalty. Section 16(a) of TSCA, (15 U.S.C. § 2615(a)), 40 C.F.R. § 745.87(d)), the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note), and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. § 19.4, authorize a penalty of not more than \$37,500 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689 that occurs after January 12, 2009.
94. For purposes of determining the amount of any civil penalty to be assessed, Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires EPA to take into account the nature, circumstances, extent, and gravity of the violation or violations alleged 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”). In developing a proposed penalty, Complainant will take into account the particular facts and circumstances of this case with specific reference to the statutory factors set forth in Section 16 of TSCA and EPA’s August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation and Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (“ERP”), revised April 2013, a copy of which is enclosed with this Complaint. The ERP represents an analysis of the statutory factors listed above, as well as guidance on their application to particular cases. The ERP also provides a rational, consistent, and equitable calculation methodology for applying these factors to particular cases.

95. Calculated pursuant to the *ERP*, EPA proposes to assess a civil penalty of thirty-eight thousand, five hundred and twenty dollars (\$38,520) against the Respondent for the nine (9) violations alleged herein.
96. The calculations for the proposed penalty are detailed in the Appendix to this Complaint.
97. EPA's proposed penalty is not a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. EPA will consider, among other factors, Respondent's ability to pay as an adjustment to the proposed civil penalty assessed in this Complaint. The proposed penalty reflects a presumption of the Respondent's ability to pay the penalty and to continue in business based on the size of its business and the economic impact of the proposed penalty on its business. The burden of raising and demonstrating an inability to pay rests with Respondent. In addition, to the extent that facts or 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.
98. If the penalty proposed herein is contested through the hearing process described below, Complainant is prepared to support the statutory basis for the elements of the penalty policy applied in this case as well as the amount and nature of the penalty proposed. If appropriate, penalty adjustments may be made during settlement negotiations. EPA reserves the right to seek higher penalties if new evidence supports such assessment.

VI. NOTICE AND OPPORTUNITY TO REQUEST A HEARING

99. The Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint or the appropriateness of the proposed penalty. To request

a hearing, Respondent must file a written Answer to the Complaint, within thirty (30) days of receipt of this Complaint, with:

Lydia A. Guy, Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

100. The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. Where Respondent has no knowledge of the facts contained in an allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which the Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts alleged in this Complaint that are not admitted, denied or explained in the Answer will be considered admitted.
101. Failure of the Respondent 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. Default shall constitute, for the purposes of this proceeding only, an admission of all facts alleged in this Complaint and a waiver of Respondent's right to contest such factual allegations.
102. Any hearing requested by the Respondent will be held at a location to be determined at a later date pursuant to the *Consolidated Rules of Practice* at 40 C.F.R. § 22.21(d). The hearing will be conducted in accordance with the provisions of the *Consolidated Rules of Practice*.

103. A copy of Respondent's Answer and all other documents that the Respondent files in this action should be sent to the attorney assigned to represent Complainant in this case, Philip Yeany, at:

Philip Yeany (3RC50)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

VII. SETTLEMENT CONFERENCE

104. Complainant encourages settlement of this proceeding at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of TSCA. Whether or not a hearing is requested, the Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint, and the amount of the proposed civil penalty. However, a request for a settlement conference does not relieve the Respondent of its responsibility to file a timely Answer to the Complaint.
105. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The filing of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint and to appeal the Final Order accompanying the Consent Agreement.
106. If the Respondent wishes to arrange a settlement conference, Respondent or Respondent's legal counsel should contact Mr. Yeany at (215) 814-2495 prior to the expiration of the thirty (30) day period following the receipt of this Complaint. Once again, however, such a request for a settlement conference does not relieve the

Respondent of its responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.

VIII. QUICK RESOLUTION

107. In accordance with 40 C.F.R. § 22.18(a) of the *Consolidated Rules of Practice*, the Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint. If the Respondent pays the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1) of the *Consolidated Rules of Practice*, no Answer need be filed.
108. If the Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer but need additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2) of the *Consolidated Rules of Practice*, Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint stating that the Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with Lydia A. Guy, the Regional Hearing Clerk and a copy shall be provided to Mr. Yeany. Within sixty (60) days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17 of the *Consolidated Rules of Practice*.
109. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3) of the *Consolidated Rules of Practice*, the Regional Judicial Officer or Regional Administrator

shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

110. Payment of the civil penalty amount required under the terms of Paragraph 95, above, shall be made as follows:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, that is, TSCA-03-2017-0106;
- b. All checks shall be made payable to "**United States Treasury**;"
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Heather Russell (513-487-2044)

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

US EPA
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Contact: 314-418-1028

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

U.S. EPA
Cincinnati Finance Center
26 W. Martin Luther King Drive, MS-002
Cincinnati, OH 45268-0001

- f. All electronic payments made by electronic wire transfers shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 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

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

US 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: Randolph Maxwell 202-874-3720
or REX, 1-866-234-5681

- h. On-Line Payment Option for credit and debit card payments:

WWW.PAY.GOV

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

- i. Additional payment guidance is available at:


http://www.epa.gov/ocfo/finservices/make_a_payment.htm

111. Respondent shall submit copies of the check(s), or verification of the wire transfer(s) or electronic payment(s) to Lydia A. Guy, the Regional Hearing Clerk and Mr. Yeany.

IX. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

112. The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: The Region III Office of Regional Counsel; the Region III Land and Chemicals Division; the Office of the EPA Assistant Administrator for Pesticides and Toxic Substances; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance of this Complaint until issuance of a final Agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, the Presiding Officer, the Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* (unilateral) communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the *Consolidated Rules of Practice* prohibit any *ex parte* discussion of the merits of a case between either party to this proceeding and the Administrator, members of the Environmental Appeals Board, the Presiding Officer, the Judicial Officer, the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

3-10-17
Date


Catherine A. Libertz, Acting Director
Land and Chemicals Division

APPENDIX

<u>COUNT</u>	<u>EXTENT LEVEL</u>	<u>CIRCUMSTANCE LEVEL</u>	<u>PENALTY</u>
Count I	Minor	3a (ERP, Appendix A, page A-3)	\$4,500
<u>Count II</u>	Minor	6a (ERP, Appendix A, page A-3)	\$600
Count III	Minor	1b (ERP, Appendix A, page A-1)	\$2,840
Count IV	Minor	2a (ERP, Appendix A, page A-5)	\$6,000
Count V	Minor	2a (ERP, Appendix A, page A-5)	\$6,000
Count VI	Minor	2a (ERP, Appendix A, page A-5)	\$6,000
Count VII	Minor	2a (ERP, Appendix A, page A-5)	\$6,000
Count VIII	Minor	2a (ERP, Appendix A, page A-5)	\$6,000
Count IX	Minor	4b (ERP, Appendix A, page A-2)	\$580
TOTAL PROPOSED PENALTY			\$38,520

EPA has determined the extent level for each violation and calculated the proposed penalty for each violation using the matrix in the ERP, Appendix B, page B-2.

TSCA-03-2017-0106

CERTIFICATE OF SERVICE

I hereby certify that on the date noted below, I had delivered to the Regional Hearing Clerk, EPA Region III, the original Administrative Complaint and Notice of Opportunity to Request a Hearing and a copy of the same. In addition, I caused a true and correct copy of the Administrative Complaint and Notice of Opportunity to Request a Hearing to be served as follows:

Certified Mail,
Return Receipt
Requested:

Jose and Frances Nataren
428 Foxridge Drive
Leesburg, VA 20175

3/17/17
DATE

Philip Yeany
Philip Yeany
Senior Assistant
Regional Counsel