UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania

In the Matter of:	:	
RFN Enterprise, Inc.	:	**U.S. EPA Docket No. TSCA-03-2017-0106**
Respondent.	:	

INITIAL DECISION AND DEFAULT ORDER

On March 17, 2017, the Director of the Land and Chemicals Division of the United States Environmental Protection Agency, Region 3 ("Complainant") commenced a civil administrative proceeding against RFN Enterprise, Inc. ("Respondent") with the filing of an Administrative Complaint and Notice of Opportunity for a Hearing ("Complaint") pursuant to 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. The Complaint alleged in nine (9) counts that Respondent had violated TSCA in connection with a lead-based paint renovation Respondent performed in April of 2013 at a residential property located at 5338 Reisterstown Road in Baltimore, Maryland, and proposed the assessment of a civil monetary penalty in the amount of $38,520.00 for these violations. In its currently pending Motion for Default Order, the Complainant alleges that Respondent is in default for failure to file an Answer to the Complaint and seeks issuance of a Default Order and Initial Decision.

Based upon the record of this matter and for the reasons set forth, *infra*, 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 $38,520.00 for its violations of TSCA as set forth in the Complaint.

I. Findings of Fact and Conclusions of Law

Pursuant to 40 C.F.R. §§ 22.17(c) and 22.27(a), and based upon the record of this 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, RFN Enterprise, Inc., at all time relevant to this matter, was a Virginia corporation with a home office located at 428 Foxridge Drive, Leesburg, Virginia 20175, and was engaged in, among other things, the performance of renovations of residential properties.
3. On March 17, 2017, pursuant to Sections 16(a) and 409 of TSCA, 15 U.S.C. §§ 2615(a) and 2689, Complainant filed a nine (9) 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 Section 409 of TSCA, 15 U.S.C. § 2689, and 40 C.F.R. Part 745, Subpart E, in connection with an April 2013 lead-based paint renovation performed at a residential property located at 5338 Reisterstown Road in Baltimore, Maryland. The Complaint proposed the assessment of a civil monetary penalty in the amount of $38,520.00 and 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)), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the 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 – Title X ("RLBPHRA"), 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 – Lead Exposure Reduction, Sections 401 through 412, 15 U.S.C. §§ 2681 through 2692, which provided authority to the EPA Administrator to promulgate implementing regulations.
5. Subsequently, 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 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 TSCA Subchapter IV, 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 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 and child occupied facilities, 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. During the time period between August 2012 and April 2013, Respondent entered into a contract with the owner of the house located at 5338 Reisterstown Road in Baltimore, Maryland ("Reisterstown Home"), to renovate the house for compensation, with the renovation work primarily consisting of construction and painting of walls.
19. In or about April of 2013, Respondent performed the renovation for compensation of the Reisterstown Home.
20. At the time of the renovation, the Reisterstown Home was a two-story residence 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.

21. The Reisterstown Home was, at all times relevant to this proceeding, "target housing" as defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17).

22. Respondent's renovation at the Reisterstown 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.

23. On April 1, 2013, an inspector with the Maryland Department of Environment ("MDE") observed Respondent's renovations of the Reisterstown Home. ("April 1, 2013 Inspection").

Count I – Failure to Obtain Initial Firm Certification

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

25. Respondent was not EPA certified as provided by 40 C.F.R. § 745.89, prior to or at the time of performing the renovation work at the Reisterstown Home in or about April of 2013.

26. Respondent's failure to obtain an initial certification from EPA prior to or at the time of performing renovations at the Reisterstown Home, in or about April of 2013, 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 Make Available All Records Demonstrating Performance of All Applicable Lead Work Practices

27. Pursuant to 40 C.F.R. § 745.86, a firm 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 complied with the requirements of 40 C.F.R. § 745.85, including performance of lead-

safe work practices and post-renovation cleaning, as set forth in 40 C.F.R. § 745.85(a) and (b).

28. During a May 22, 2013 EPA inspection of Respondent's offices, EPA requested that Respondent make available records documenting Respondent's performance of lead-safe practices and post-renovation cleaning, as required by 40 C.F.R. § 745.85, in connection with the April 2013 renovation of the Reisterstown Home.

29. During the May 22, 2013 inspection, Respondent failed to produce for EPA records documenting Respondent's performance and compliance with lead-safe practices and post-renovation cleaning, as required by 40 C.F.R. § 745.85, in connection with the April 2013 renovation of the Reisterstown Home.

30. Respondent's failure, on or about May 22, 2013, to make available to EPA all records necessary to document Respondent's performance of lead-safe practices and post-renovation cleaning, as required by 40 C.F.R. § 745.85, concerning the April of 2013 renovation of the Reisterstown Home, 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

31. 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 renovation activities to remain outside the work area, with an exception not relevant to this proceeding.

32. At the time of the April 1, 2013 Inspection of the Reisterstown Home, Respondent had not posted warning signs as required by 40 C.F.R. § 745.85(a)(1).

33. Respondents failure, on or about April 1, 2013, to post warning signs at the Reisterstown Home clearly defining the work area and warning occupants and other persons not

involved in 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 Work Area or Cover Them

34. Pursuant to 40 C.F.R. § 745.85(a)(2), before beginning a renovation, a firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed.

35. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(A), a firm performing a renovation must remove all objects from a work area, including furniture, rugs and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

36. At the time of the April 1, 2013 Inspection of the Reisterstown Home, Respondent had not removed all objects from the work area, or cover them with plastic sheeting or other impermeable material, as required by 40 C.F.R. § 745.85(a)(2)(i)(A).

37. Respondents failure, on or about April 1, 2013, to remove all objects from the work area of the renovation of the Reisterstown Home or to cover them with plastic 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 Duct Openings in Work Area

38. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(B), a firm performing a renovation must close and cover all duct openings in the work area with taped-down plastic sheeting or other impermeable materials.

39. At the time of the April 1, 2013 Inspection of the Reisterstown Home, Respondent failed to cover all duct openings in the work area with taped-down plastic sheeting or other impermeable materials, as required by 40 C.F.R. § 745.85(a)(2)(i)(B).

40. Respondent's failure, during the renovation of the Reisterstown Home on or about April 1, 2013, to cover all duct openings in the work area 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 Work Area

41. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(C), a firm performing a renovation must close windows and doors in the work area, with doors covered with plastic sheeting or other impermeable material.

42. At the time of the April 1, 2013 Inspection of the Reisterstown Home, Respondent failed to close all the windows and doors in the work area and failed to cover all doors with plastic sheeting or other impermeable material, as required by 40 C.F.R. § 745.85(a)(2)(i)(C).

43. Respondent's failure during the renovation of the Reisterstown Home, on or about April 1, 2013, to close all the windows and doors in the work area and cover all the doors 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 Floor Surface

44. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(D), a firm performing a renovation must cover the floor surface, including installed carpet, in a work area with taped-down plastic

sheeting or other impermeable material 6 feet beyond the perimeter of surfaces undergoing renovations or a sufficient distance to contain dust, whichever is greater.

45. At the time of the April 1, 2013 Inspection of the Reisterstown Home, Respondent failed to cover the floor surface in a work area with taped-down plastic sheeting or other impermeable material 6 feet beyond the perimeter of surfaces undergoing renovations or a sufficient distance to contain dust, whichever is greater.

46. Respondent's failure during the renovation of the Reisterstown Home, on or about April 1, 2013, to cover the floor surface in a work area with taped-down plastic sheeting or other impermeable material 6 feet beyond the perimeter of surfaces undergoing renovations or a sufficient distance to contain dust, whichever is greater 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

47. Pursuant to 40 C.F.R. § 745.85(a)(4)(i), a firm conducting a renovation must contain waste from renovation activities to prevent the release of dust and debris before the waste is removed from the work area for storage and disposal.

48. At the time of the April 1, 2013 Inspection of the Reisterstown Home, Respondent failed to contain waste from renovation activities to prevent the release of dust and debris before the waste is removed from the work area for storage and disposal.

49. Respondent's failure during the renovation of the Reisterstown Home, on or about April 1, 2013, to contain waste from renovation activities to prevent the release of dust and debris before the waste is removed from the work area for storage and 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 Written Acknowledge or Written Certification of Mailing

50. Pursuant to 40 C.F.R. § 745.84(a)(1), no more than sixty (60) days before the beginning of a renovation, a firm must provide EPA's Lead Hazard Information Pamphlet to the owner of the unit undergoing renovations.

51. In addition, 40 C.F.R. § 745.84(a)(1) requires a firm either to obtain a written acknowledgment that the owner was provided with EPA's Lead Hazard Information Pamphlet, as required by 40 C.F.R. § 745.84(a)(1)(i), or have a certificate of mailing the pamphlet to the owner at least seven (7) days prior to the renovation, as required by 40 C.F.R. § 745.84(a)(1)(ii).

52. Respondent did not obtain either a written acknowledgment from the owner of the Reisterstown Home that the EPA's Lead Hazard Information Pamphlet was provided, as required by 40 C.F.R. § 745.84(a)(1)(i), or a certificate evidencing mailing the pamphlet to the owner at least seven (7) days prior to the April 2013 renovation, as required by 40 C.F.R. § 745.84(a)(1)(ii).

53. Respondent's failure, prior to the April 2013 renovation, to obtain a written acknowledgment that the owner of the Reisterstown Home was provided with EPA's Lead Hazard Information Pamphlet, as required by 40 C.F.R. § 745.84(a)(1)(i), or have a certificate of mailing the pamphlet to the owner at least seven (7) days prior to the renovation, as required by 40 C.F.R. § 745.84(a)(1)(ii), is a violation of 40 C.F.R. § 745.84(a)(1)(i) and (ii) and Section 409 of TSCA, 15 U.S.C. § 2689.

54. Based upon the foregoing, I find that Respondent violated Section 409 of TSCA, 15 U.S.C. § 2689, and the federal regulations at 40 C.F.R. Part 745, Subpart E, as set forth in Counts I through IX of the Complaint, and that Respondent's violations provide the legal

basis for the assessment against Respondent of a civil monetary penalty pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a).

55. 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 Regional Hearing Clerk immediately upon completion of service. 40 C.F.R. § 22.5(b)(1)(iii).

56. On March 17, 2017, Complainant served a true and correct copy of the Complaint via the U.S. Postal Service's ("USPS") Certified Mail, Return Receipt Requested service on Frances Nataren, Respondent's corporate president, and Jose Nataren, Respondent's corporate vice-president, at Respondent's offices located at 428 Foxridge Drive, Leesburg, Virginia. The USPS certified mail return receipt ("Green Card") was returned to the Complainant signed and dated. More specifically, the Green Card indicated that the Complaint was received by Respondent on March 22, 2017 and signed for by Frances Nataren. In addition to the signature, under the signature line on the Green Card was printed the name "Frances Nataren." (*Certificate and Proof of Service May 5, 2017).*

57. On May 5, 2017, 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).[1]

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

59. I conclude that, on March 22, 2017, the Complaint was lawfully and properly served on the Respondent's corporate president at Respondent's corporate offices via USPS' Certified Mail/Return Receipt Requested service in accordance with the Consolidated Rules of Practice, 40 C.F.R. § 22.5(b)(1)(i) and (ii)(A).

60. Rule 22.15(a) of the Consolidated Rules of Practice, 40 C.F.R. § 22.15(a), 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.

61. 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

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[1] With regard to the period of time between the service of the Complaint and filing of the Proof of Service, Complainant indicates in its Motion for Default: "Counsel for the Complainant filed the Proof of Service with the Regional Hearing Clerk shortly after receiving it. Counsel has inquired and has been unable to determine why there was such an extended delay between service of the Complaint and delivery of the return receipt to him." *(Motion for Default* at 2, fn. 1.)

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.*)

62. As of the date of this Default Order, Respondent has not filed with EPA Region 3's Regional Hearing Clerk an Answer to the Complaint or made a request for an extension of time to file an Answer.[2]

63. On August 4, 2017, Complainant filed a Motion for Default Order seeking issuance of a Default Order holding Respondent in default, finding that Respondent had violated TSCA as set forth in the nine (9) counts of the Complaint and requesting the assessment of a civil penalty of $38,520.00 as proposed in the Complaint.

64. On August 4, 2017, Complainant served the Motion for Default Order on Frances Nataren and Jose Nataren, Respondent's president and vice-president respectively, at Respondent's offices located at 428 Foxridge Drive, Leesburg, Virginia, via the U.S. Postal Service's Certified Mail/Return Receipt Requested service.

65. Service of a motion is complete, *inter alia*, upon mailing. 40 C.F.R. § 22.7(c).

66. Complainant's Motion for Default Order was lawfully and properly served on Respondent on August 4, 2017 via USPS' Certified Mail/Return Receipt Requested

[2] The Complaint filed in this matter informed Respondent that "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." (*Complaint* at 18, ¶ 101).

service in accordance with the Consolidated Rules of Practice, 40 C.F.R. § 22.5(b)(2) and 22.7(c).

67. Respondent was required to file any response to the Motion for Default Order within eighteen (18) days of service of the Motion.[3] 40 C.F.R. §§ 22.7(c) and 22.16(b).

68. As of the date of this Default 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 Complainant's Motion. 40 C.F.R. § 22.16(b).

69. 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

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 any rule issue thereunder. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates 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.[4] In determining the amount of a civil penalty to be assessed for such a violation, EPA is required to take into account the nature,

[3] 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 previously delineated five (5) days, are to be added to the time allowed under the CROP for the filing of a responsive document when service is effectuated by the U.S. mail.

[4] 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).

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 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 as to 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)).

Pursuant to Rule 22.17(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.17(c), with regard to the issuance of a Default Order, the relief proposed in the Complaint on Motion for Default shall be ordered unless it is "clearly inconsistent with the record of the proceeding or the Act." 40 C.F.R. § 22.17(c) also provides that, if a Default Order resolves all outstanding

issue and claims in a proceeding, it shall constitute an Initial Decision. 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 for cases involving violations of 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 a 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 Motion for Default Order, Complainant proposed the assessment of a civil penalty in the amount of $38,520.00 against Respondent for its violations of TSCA.

In support of its Motion for Default, Complainant included the Declaration of Craig Yussen, a chemical engineer and credentialed compliance officer with the Toxics Program Branch of the Land and Chemicals Division of U.S. EPA Region III since 1990. *Yussen Declaration* at ¶ 1. In his capacities as a Compliance Officer, Mr. Yussen 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. *Yussen Declaration* at ¶ 6 and 7. Utilizing the ERPP, Complainant calculated the proposed penalty of $38,520.00 as follows:

Count I – Failure to Obtain Initial Certification from EPA
Nature – Chemical Control
Circumstance - Level 3a (medium probability of impact to human health/environment)
Extent – Minor (No individual younger than 18 resided in Target Housing at time of violation or renovation)
GBP Penalty Matrix = $4,500.00

Count II – Failure to Retain Required Records
Nature – Control-Associated Data Gathering
Circumstance - Level 6a (low probability of impact to human health/environment)
Extent – Minor (No individual younger than 18 resided in Target Housing at time of violation or renovation)
GBP Penalty Matrix = $600.00

Count III – Failure to Post Signs in Work Area
Nature – Chemical Control
Circumstance - Level 1b (high probability of impact to human health/environment)
Extent – Minor (No individual younger than 18 resided in Target Housing at time of violation or renovation)
GBP Penalty Matrix = $2,840.00

Count IV – Failure to Remove or Cover Objects in Work Area
Nature – Chemical Control
Circumstance - Level 2a (high probability of impact to human health/environment)
Extent – Minor (No individual younger than 18 resided in Target Housing at time of violation or renovation)
GBP Penalty Matrix = $6,000.00

Count V – Failure to Close and Cover All Ducts in Work Area
Nature – Chemical Control
Circumstance - Level 2a (high probability of impact to human health/environment)
Extent – Minor (No individual younger than 18 resided in Target Housing at time of violation or renovation)
GBP Penalty Matrix = $6,000.00

Count VI – Failure to Close and Cover Windows and Doors in Work Area
Nature – Chemical Control
Circumstance - Level 2a (high probability of impact to human health/environment)
Extent – Minor (No individual younger than 18 resided in Target Housing at time of violation or renovation)
GBP Penalty Matrix = $6,000.00

Count VII – Failure to Cover Floor in Work Area
Nature – Chemical Control
Circumstance - Level 2a (high probability of impact to human health/environment)
Extent – Minor (No individual younger than 18 resided in Target Housing at time of violation or renovation)
GBP Penalty Matrix = $6,000.00

Count VIII – Failure to Contain Waste From Renovation Activities
Nature – Chemical Control
Circumstance - Level 2a (high probability of impact to human health/environment)
Extent – Minor (No individual younger than 18 resided in Target Housing at time of violation or renovation)
GBP Penalty Matrix = $6,000.00

Count IX – Failure to Obtain Written Acknowledgement
Nature – Hazard Assessment
Circumstance - Level 4b (medium probability of impact to human health/environment)
Extent – Minor (No individual younger than 18 resided in Target Housing at time of violation or renovation)
GBP Penalty Matrix = $580.00

Yussen Declaration at ¶¶ 19 - 54. Additionally, Complainant took into consideration but did not increase or decrease the proposed penalty in light 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. *Yussen Declaration* at ¶ 56 *and Motion for Default* at 11-12. More specifically, as part of his Declaration, Mr. Yussen indicated that the Respondent did not have a history of prior violations of the RRP Rule or the PRE Rule. *Yussen Declaration* at ¶ 56. Additionally, Mr. Yussen indicated that Complainant possessed no information indicating an enhanced degree of culpability on the part of the Respondent or that the penalty amount should be decreased in light of other factors as justice may require. *Id.* Furthermore, Mr. Yussen determined that Respondent did not incur any significant economic benefit as a result of its non-compliance with TSCA. *Id.* Finally, as discussed in more detail, *infra*, Mr. Yussen concluded that a downward adjustment to reflect the Respondent's ability to pay or continue in business was not warranted because Respondent did not provide any financial information to EPA for its review and thereby, Mr. Yussen "had inadequate information to determine whether the penalty warranted a downward adjustment to reflect Respondent's ability to pay or continue in business." *Id.*

B. Analysis of 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 $38,520.00 penalty amount requested and as calculated by Complainant is appropriate and is not clearly inconsistent with the regard to TSCA, the Residential Lead-Based Paint Hazard Reduction Act, or the RRP Rule.

The following sets forth my analysis of the penalty calculation for this case. This analysis is based upon a consideration of the statutory factors in light of the facts of this matter and the ERPP which I find provides a rational, consistent and equitable methodology for applying the TSCA statutory factors to the facts and circumstances of a specific case.

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

Count I – Failure to Obtain Initial Certification

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.[5] Lead in residential housing and child-

[5] *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.

occupied facilities remains the most important source of lead exposure for young children 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 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, in pertinent part, 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).

21,692, 21,693-4 (April 22, 2008); and Lead – Renovation, Repair, and Painting Program, 71 Fed. Reg. 1588, 1590 (Jan. 10, 2006).

Extent of Violation – Due to the fact that at the time of the renovation of the Reisterstown Home in April of 2013 no individuals under the age of eighteen resided in or were present in the premises, I conclude that Respondent's violation of 40 C.F.R § 745.81(a)(2)(ii) posed a low potential for harm (*ERPP* at 16) and warrants 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 - Failure to Retain Records

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, at the time of the renovation of the Reisterstown Home in April of 2013 no individuals under the age of eighteen resided in or were

present in the premises. Therefore, 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 $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.

Counts III to VIII – Work Practice Violations

Counts III through VIII of the Complaint address Respondent's violations of certain work practice requirements of the RRP rule with regard to the renovation performed at the Reisterstown Home in April of 2013. More specifically, the Counts address:

Count III – Failure to post signs in work area;

Count IV – Failure to remove or cover all objects in work area;

Count V – Failure to cover all ducts in work area;

Count VI – Failure to close and cover all windows and doors in work area;

Count VII – Failure to cover floor surface in work area; and

Count VIII – Failure to contain renovation activity waste prior to removal from work area.

Nature of Violation - With regard to Respondent's violations in Counts III through VIII, I conclude that it is appropriate to characterize these requirements as "Chemical Control" in nature in that they require renovators, like Respondent, to utilize work practices that are designed to limit human exposure to lead and the risk presented by lead-based renovation activities.

Circumstance Level – The record of this matter supports a finding that Respondent's failure to comply with the work-practice standards of the RRP rule as set forth in Counts IIII

through VIII of the Complaint posed a high probability of impact or harm to human health and the environment. As part of the Final Rule Federal Register entry published with regard to RRP Rule, the lead Renovation, Repair and Painting Program, EPA issued its determination that "renovation, repair and painting activities disturb lead-based paint [and] create lead-based paint hazards." 73 FR 21699 (April 22, 2008). As a result, the Agency concluded that "training, containment, cleaning and cleaning verification requirements" (i.e., work-practice standards) were necessary to "achieve the goal of minimizing exposure to lead-based paint hazards created during renovation, remodeling and painting activities." 73 FR 21700 (April 22, 2008)

Extent of Violation – As previously discussed, at the time of the renovation of the Reisterstown Home in April of 2013 no individuals under the age of eighteen resided in or were present in the premises. Therefore, I conclude that Respondent's violations warrant an extent level of minor.

GBP Penalties for Count III through VII – Based upon the aforesaid analysis, I conclude that the following gravity-based penalties are appropriate for Respondent's violations as set forth in Counts III through VIII:

Count III	$2,840.00
Count IV	$6,000.00
Count V	$6,000.00
Count VI	$6,000.00
Count VII	$6,000.00
Count VIII	$6,000.00

Count IX – Failure to Obtain Written Acknowledgement or Certification

Nature of Violation - With regard to Respondent's violation as set forth in Count IX, failure to obtain a written acknowledgement of providing EPA's Lead Pamphlet or written certification of mailing of the Pamphlet pursuant to 40 C.F.R. § 745.84(a)(1), 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 Reisterstown Home the EPA Pamphlet prior to the renovation of the home resulted in a medium 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.

Extent of Violation – As previously discussed, at the time of the renovation of the Reisterstown Home no individuals under the age of eighteen resided in or were present in the

premises. Therefore, I conclude that Respondent's violation posed a low potential for harm and warrants an extent level of minor.

GBP Penalty for Count IX – Based upon the aforesaid analysis, I conclude that a gravity-based penalty in the amount of $580.00 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.

The total Gravity-Based Penalty for Counts I through IX is $38,520.00.

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 represented by Complainant, 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. Complainant also concluded as part of its penalty calculation that Respondent did not incur any significant economic benefit as a result of its non-compliance with TSCA. *Yussen Declaration* at ¶ 56. Finally, I find no evidence in the record of this case to warrant either an upward or downward adjustment to the proposed penalty based upon the factor 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.

With regard to the ability-to-pay penalty factor, the EAB has held that "'a respondent's ability to pay may be presumed until it is put at issue by a respondent,' because the Agency's

ability to gather the necessary financial information about a respondent is limited and the respondent is in the best position to obtain the relevant financial records about its own financial condition." *In re: CDT Landfill Corp.*, 11 E.A.D. 88, 122 (EAB 2003) (*citing Spitzer Great Lakes,* 9 E.A.D. at 321 and *New Waterbury*, 5 E.A.D. at 541.) *See also In re: Donald Cutler*, 11 E.A.D. 622, 632 (EAB 2004); and *In re Kay Dee Veterinary*, 2 E.A.D. 646, 652 n.15 (CJO 1988) (referring to the "customary evidentiary rule that the party to an adjudicatory proceeding who is in possession of the facts has the responsibility to produce them.") In those instances when "a respondent does not raise its ability to pay as an issue in its answer, or fails to produce any evidence to support an inability to pay claim after being apprised of that obligation during the pre-hearing process, the Region may properly argue and the presiding officer may conclude that any objection to the penalty based upon ability to pay has been waived." *Spitzer Great Lakes,* 9 E.A.D. at 321 (*citing New Waterbury*, 5 E.A.D. at 542). Concomitantly, "when a respondent does put its ability to pay (or the economic impact of the penalty on the business) at issue, the Region must demonstrate, as part of its *prima facie* case, that it did consider the appropriateness of the proposed penalty in light of its impact on respondent's business." *CDT Landfill*, 11 E.A.D. at 122. *See also In re: JHNY, Inc., a/k/a Quin-T Technical Papers and Boards*, 12 E.A.D. 372, 398 (EAB 2005); *In re Lin*, 5 E.A.D. 595, 599 (EAB 1994) and *New Waterbury*, 5 E.A.D. at 542.

With regard to this burden, the Environmental Appeals Board in *New Waterbury* noted that,

> 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 those situations when a respondent does raise an ability to pay claim, applicable case law clearly indicates that a respondent also is required to provide to the EPA evidence sufficient to substantiate its claim. *See Spitzer Great Lakes*, 9 E.A.D. at 321; and *New Waterbury*, 5 E.A.D. at 542 ("In any case where ability to pay is put in issue, the Region must be given access to the respondent's financial records before the start of such hearing.").

In the matter at bar, after the Complaint[6] was served on Respondent, Francis Nataren, Respondent's President, called counsel for Complainant on March 30, 2017 and claimed that the company was not able to pay the penalty proposed in the Complaint. *Motion for Default* at 11-12 ("During the course of the call, Ms. Nataren represented to Complainant's counsel that the Respondent could not afford the penalty proposed in the Complaint."). In response, Complainant's counsel emailed Respondent on April 6, 2017[7] and May 4, 2017[8], "asking for

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[6] The Complaint specifically provided: "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 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 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." (*Complaint* at ¶ 97.)

[7] Complainant's April 6, 2017 email to Respondent provided: "I have attached a questionnaire that EPA uses when a company that EPA has charged with violations asserts that it cannot pay the penalty that EPA is seeking. Please fill out the form and send the completed questionnaire back to me. If you and Mr. Nataren or the company have filed bankruptcy papers or other papers showing that the company is no longer in operation, please include that with the completed questionnaire. Also, please include copies of your and Mr. Nataren's joint tax returns for the past three years. If you and Mr. Nataren file individual returns, please include the returns for both of you for the past three years. Please provide your response by April 24. To the address below [sic] Please call me or send me an email message if you have any questions." (*Motion for Default – Exhibit G*).

[8] Complainant's May 4, 2017 email provided: "I have not received the financial questionnaire that I sent you on April 6. For your convenience I have attached the questionnaire to this message. Please complete the questionnaire and return it to me at the address set out below. Please include copies of your and Mr. Nataren's joint tax returns for the past three years. If you and Mr. Nataren file individual returns, please include the returns for both of you for the

information that could document the Respondent's claim of financial hardship." *Id.* at 12 and *Exhibit G*. However, Respondent failed to answer the requests by Complainant and did not supply any financial information to Complainant to support and substantiate its claim of an ability-to-pay. *Id.* and *Yussen Declaration* at ¶ 55. As a result, I find that Respondent waived any ability-to-pay claim by failing to provide supporting financial information to Complainant to substantiate the claim and that no downward adjustment to the penalty is warranted.

Therefore, I conclude that, based upon the TSCA statutory factors and the record of this matter, the proposed penalty of $38,520.00 is an appropriate civil penalty to be assessed against the Respondent in light of its violations of TSCA, and 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.

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past three years. Please provide your response by May 11. to the address below [sic] Please call me or send me an email message if you have any questions." *(Motion for Default – Exhibit G).*

ORDER

Pursuant to the Consolidated Rules of Practice, 40 C.F.R. §§ 22.17 and .27, Complainant's Motion for Default is **GRANTED** and Respondent is **ORDERED** as follows:

1. Respondent, RFN Enterprise, Inc. is assessed a civil penalty in the amount of $38,520.00 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 time that payment is made, Respondent shall mail copies of any check or written notification confirming electronic fund transfer or online payment to:

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

and

Phil Yeany
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's Office for further action.
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.

May 30, 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-03-2017-0106) was served on MAY 3 0 2018 by the manner indicated below upon the following:

COMPLAINANT:

Via Hand Delivery

Philip Yeany
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. 7016 1370 0001 3642 7521

UPS Tracking No. 1Z A43 F71 24 9960 7291

Jose and Frances Nataren
RFN Enterprise, Inc.
428 Foxridge Drive
Leesburg, VA 20175

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)