

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for ANDREA SIMPSON 7/18/19  
Name of Case Attorney Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number TSCA-01-2017-0060

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

JUAN C. GARCIA d/b/a  
MASTER ROOFING & RESTORATION  
19 PLAVE ST. REAR  
STAMFORD, CT 06902-5596

Total Dollar Amount of Receivable \$ 4,354.<sup>02</sup> Due Date: 8/17/19

SEP due? Yes  No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

- 1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office

\_\_\_\_\_ Phone Number

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I**

\_\_\_\_\_) )  
**In the Matter of:** ) )  
 ) )  
Juan C. Garcia d/b/a ) )  
Master Roofing and Restoration ) )  
19 Piave Street Rear ) )  
Stamford, CT 06902-5596 ) )  
 ) )  
Respondent ) )  
 ) )  
Proceeding under Section 16(a) of the ) )  
Toxic Substances Control Act, ) )  
15 U.S.C. § 2615(a) ) )  
\_\_\_\_\_ ) )

**RECEIVED**  
**JUL 18 2019**  
EPA ORC WS  
Office of Regional Hearing Clerk

EPA Docket No.  
TSCA-01-2017-0060

**INITIAL DECISION AND DEFAULT ORDER**

**I. Introduction**

This proceeding was commenced on August 9, 2017 with the filing of a Complaint by the Complainant, the United States Environmental Protection Agency, Region 1 (“EPA”), against Respondent, Juan C. Garcia d/b/a Master Roofing and Restoration (“Master Roofing” or “Respondent”). The Complaint charges Respondent with four violations of Sections 15 and 409 of the Toxic Substance Control Act, 15 U.S.C. §§ 2614 and 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. 4851 *et seq.*, and the federal regulations promulgated thereunder, set forth in 40 C.F.R. Part 745, Subpart E (“the “Renovation, Repair and Painting Rule” or the “RRP Rule”). The Complaint proposed a total penalty of \$1,354.00.

The Complaint was filed on August 9, 2017, and service was completed on October 26, 2017. To date, Respondent has not filed an Answer and has not requested an extension of time for filing an Answer. In accordance with Rule 22.17(a), this failure to respond constitutes an

admission of the facts alleged in the Complaint and grounds for an assessment of a penalty of \$1,404.00. For the reasons discussed below, Respondent is found to be in default pursuant to Section 22.17(a) of the Consolidated Rules of Practice, 40 C.F.R. § 22.17(a), and is assessed a penalty of \$1,354.00.

## **II. Findings of Fact and Conclusions of Law**

1. Complainant is the United States Environmental Protection Agency, Region 1.
2. Respondent is Juan C. Garcia d/b/a Master Roofing and Restoration, a renovator as defined in 40 C.F.R. § 745.83, as well as a “firm” as defined in 40 C.F.R. § 745.83. Respondent is a construction business involved in roofing, other renovation, and painting services, with annual sales of \$140,000.00 in 2017.

### **Service of the Complaint**

3. On October 26, 2017, the Complaint was served by hand delivery by an EPA Civil Investigator to Rene Garcia, who signed for the package at Mr. Juan Garcia’s direction. A copy of a U.S. Postal Service green card was signed by Rene Garcia as proof of delivery.
4. Service was complete as to Respondent as of October 26, 2017.
5. Respondent did not settle the matter, file a written Answer, or request a hearing or extension of time to file an Answer, within the thirty-day period specified under 40 C.F.R § 22.15(a).
6. On or about May 13, 2019, Complainant filed a Motion for Default Order.
7. To date, Respondent has not filed an Answer to the Complaint.
8. In accordance with 40 C.F.R. 22.17(a), Respondent is in DEFAULT and all of the facts alleged by Complainant shall be deemed admitted against Respondent.

## **Violations of the Toxic Substances Control Act Regulations**

9. In 2014, Respondent was hired to complete a “renovation,” as defined in 40 C.F.R. § 745.83, on a single-family house located at 24 Hewlett Street, Waterbury, Connecticut (“24 Hewlett St.”). The 24 Hewlett St. property, having been constructed in 1900, falls within the definition of “target housing” under 40 C.F.R. § 745.103.

10. Forty C.F.R. § 745.81(a)(2)(ii) requires all firms performing renovations for compensation to apply to EPA for certification to perform renovations or dust sampling. No firm may perform, offer, or claim to perform renovations without certification from EPA under 40 C.F.R. § 745.89 in target housing or child-occupied facilities unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82.

11. Forty C.F.R. § 745.84(a)(1) requires firms performing renovations to, no more than 60 days before beginning renovation activities, provide the owner of the unit with a full and complete copy of an EPA-developed or EPA-approved lead-safe renovation pamphlet (“Pamphlet”), as defined at 40 C.F.R. § 745.83. The renovating firm must also either (1) obtain from the owner a written acknowledgment that the owner has received the Pamphlet, or (2) obtain a certificate of mailing at least seven days prior to the renovation.

12. Forty C.F.R. § 745.89(d)(3) requires firms performing renovations to ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85(a)(3)(ii), and prohibits the use of machines designed to remove paint or other surface coatings through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, on painted surfaces, unless such machines have shrouds or containment systems and are equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation.

13. Forty C.F.R. § 745.89(d) requires all firms performing renovations to ensure that (1) all individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with § 745.90, and (2) a certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90.

14. On or about September 2014, the Waterbury, Connecticut Health Department (“WHD”) received a complaint that renovation work being performed at 24 Hewlett St. did not have the proper containment, and that dry sanding was occurring without a HEPA exhaust attachment. Shortly thereafter, a representative from the WHD visited 24 Hewlett St. After observing the work being performed by Respondent, the WHD representative stopped the work at the site due to the lack of proper lead-safe work practices. The representative then referred the matter to the Connecticut Department of Public Health (“CT DPH”).

15. On September 23, 2014, a representative of the CT DPH visited 24 Hewlett St. and provided compliance assistance information regarding the RRP Rule to Respondent. The representative then referred the matter to EPA.

16. An EPA representative contacted Respondent and conducted a site visit at 24 Hewlett St. on November 24, 2014.

17. Respondent failed to obtain firm certification before conducting a renovation at 24 Hewlett St. as required by 40 C.F.R. § 745.81(a)(2)(ii), constituting one violation of TSCA, 15 U.S.C. § 2689.

18. Respondent’s failure to provide a lead-safe renovation pamphlet to the owner of 24 Hewlett St. before conducting renovations, as required by 40 C.F.R. § 745.84(a)(1), constituted one violation of TSCA, 15 U.S.C. § 2689.

19. Respondent's failure to ensure that all renovations performed by the firm at 24 Hewlett St. were performed in accordance with the work practice standards, as required by 40 C.F.R. § 745.89(d)(3), constituted one violation of TSCA, 15 U.S.C. § 2689.

20. Respondent's failure to assign a certified renovator to the 24 Hewlett St. renovation, as required by 40 C.F.R. § 745.89(d), constituted one violation of TSCA, 15 U.S.C. § 2689.

### **III. Determination of Civil Penalty Amount**

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 or Motion for Default shall be ordered unless it is "clearly inconsistent with the record of the proceeding or the Act." This provision also states that if a Default Order resolves all outstanding issues 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.*

The following analysis of the penalty calculation for this matter is based upon the statutory factors, case-specific facts, and applicable civil penalty guidelines.

Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires that the following factors be considered in determining the amount of any penalty assessed under Section 16: the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and other such matters as justice may require.

Section 16(a) of TSCA, 40 C.F.R. § 745.87(d), and 40 C.F.R. § 745.235(e) authorize the

assessment of a civil penalty of up to \$37,500 per violation per day of the RRP Rule. Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvement Act, EPA amended its civil penalty policies to account for inflation. Memorandum from Susan Parker Bodine, Assistant Administrator, Office of Enforcement and Compliance Assurance, *Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule* (“Bodine Memo”) (January 11, 2018). Under the 2018 Civil Monetary Penalty Inflation Adjustment Rule, the maximum penalty for violations occurring after November 2, 2015, for which the penalty was assessed on or after January 15, 2017 and before January 15, 2018, is \$38,114. 83 Fed. Reg. 1192, 1193 (January 10, 2018), see also 84 Fed. Reg. 2058 (February 6, 2019). Accordingly, all penalty amounts should be adjusted for inflation by using the multipliers listed in Table A: Chart Reflecting Penalty Policy Inflation Adjustment Multipliers, of the Bodine Memo for all violations occurring after November 2, 2015. Bodine Memo at p. 3.

EPA has issued guidelines for assessing penalties under TSCA, *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (“ERPP”). 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, namely (1) determination of a gravity-based penalty based on the nature, circumstances, and extent of harm that may result from 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. ERPP at 9.

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 essential character of a violation is characterized as being of a “chemical control,” “control-associated data gathering,” or “hazard assessment” nature. 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 weigh 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 of harm 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 Levels 1 and 2 having the highest probability of harm, Levels 3 and 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 of harm 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.*

Note, however, that the initial calculation of the gravity-based penalty under the ERPP does not adjust the penalty for inflation. To properly adjust the penalty figure to account for inflation, the initial calculation must then be adjusted through the use of the appropriate multiplier listed in Table A of the Bodine Memo for all violations occurring after November 2, 2015. Bodine Memo at p. 3. Table A of the Bodine Memo states that the Inflation Adjustment Multiplier for ERPP violations is 1.03711. Bodine Memo at p. 13.

In addition, EPA has issued guidelines for adjusting the maximum amount of penalties allowed based on a respondent's annual gross revenue or net worth. Gregory Sullivan, *Pilot Graduated Penalty Approach for TSCA RRP Rule and Abatement Rule Enforcement Settlements* ("Pilot") (March 5, 2017). The Pilot has been extended until August 16, 2019. Email from Greg Sullivan to ECAD Directors and Deputies Re: *Extension of Lead-Based Paint Graduated Penalty Approach Policy* (June 18, 2019). The Pilot can be used to adjust penalties assessed against a

respondent that has a pre-tax, unadjusted gross annual income of \$2,000,000 or less or a net worth of \$600,000 or less. The formula for determining this adjustment is calculated as follows:

- Identify the ERPP gravity-based penalties for each violation;
- Determine the multiplier by dividing the respondent's gross annual revenue by 2,000,000; and
- Apply the multiplier to the ERPP penalty.

The resulting product is the penalty amount that should be assessed against a respondent. Pilot at p. 2.

#### Analysis of the Penalty Calculation

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 or Motion for Default shall be ordered unless it is "clearly inconsistent with the record of the proceeding or the Act." This provision also states 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.*

The following analysis of the penalty calculation for this matter is based upon the statutory factors, case-specific facts, ERPP, and Pilot. The ERPP and Pilot provide rational, consistent and equitable methodologies for applying the TSCA statutory factors to the facts and circumstances of this matter.

Count I: Failure to Obtain Firm Certification under RRP Rule

Under 40 C.F.R. § 745.89(a), firms that perform renovations for compensation in target housing must apply to EPA for certification for renovations or dust sampling pursuant to 40 C.F.R. § 745.81(a)(2)(ii), which provides that no firm may perform, offer, or claim to perform renovations in target housing or child-occupied facilities without certification from EPA under § 745.89. Respondent's failure to obtain RRP certification prior to performing renovation work at 24 Hewlett St. constitutes violations of 40 C.F.R. §§ 745.89(a) and 745.81(a)(2)(ii). Penalties for this violation may be assessed pursuant to Section 16 of TSCA.

In accordance with the ERPP, for housing units that are not occupied by children less than eighteen years of age or pregnant women, the appropriate extent of harm is minor. The policy also states that the circumstance level for violations of 40 C.F.R. §§ 745.89(a) and 745.81(a)(2)(ii) is Level 3a (medium). Accordingly, under the ERPP, the penalty for a minor, Level 3a violation is \$4,500. ERPP at Appendix B, p. B-2. In accordance with the 1.03711 penalty adjustment required by the 2018 Civil Monetary Penalty Adjustment Rule and the Bodine Memo, the adjusted violation amount is \$4,667. See 83 Fed. Reg. 1190, Bodine Memo at p. 13.

Count II: Failure to Provide Pre-Renovation Education Information

No more than sixty days before commencing renovation activities, firms must provide lead hazard information to a target housing unit owner in the form of an EPA pamphlet or EPA-approved pamphlet and obtain a written acknowledgement of receipt or a certificate of mailing at least seven days prior to the renovation. 40 C.F.R. § 745.84(a)(1)(i) or (a)(1)(ii). Respondent's failure to provide an EPA pamphlet before commencing renovation activities constitutes a violation of 40 C.F.R. §§ 745.84(a) and Section 409 of TSCA. Penalties for this violation may be

assessed pursuant to Section 16 of TSCA.

In accordance with the ERPP, for housing units that are not occupied by children less than eighteen years of age, the appropriate extent of harm for Respondent's failure to provide a Pamphlet before conducting renovations is minor. The failure to provide the owner with a Pamphlet results in a high probability of impacting human health and the environment and is considered a Level 1(b) (high) violation. Accordingly, the penalty for a minor, Level 1b violation of 40 C.F.R. § 745.84(a)(1) is \$2,840. ERPP at Appendix B, p. B-2. In accordance with the 1.03711 penalty adjustment required by the 2018 Civil Monetary Penalty Adjustment Rule and the Bodine Memo, the adjusted violation amount is \$2,945. See 83 Fed. Reg. 1190, Bodine Memo at p. 13.

Count III: Failure to Meet Work Practices Standards

Firms that perform renovations must ensure that the work meets the work practice standards in 40 C.F.R. § 745.89(d)(3). Respondent's failure to meet these standards by failing to use a containment system and a HEPA vacuum attachment to remove lead-based paint constitutes a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(3)(ii), and Section 16 of TSCA.

In accordance with the ERPP, for housing units that are not occupied by children less than eighteen years of age, the appropriate extent of harm is minor. The policy also states that the circumstance level for 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(3)(ii) violations is Level 1a (high). Accordingly, under the policy, a gravity-based penalty of \$7,500 should be assessed for this minor, Level 1a violation. ERPP at Appendix B, p. B-2. In accordance with the 1.03711 penalty adjustment required by the 2018 Civil Monetary Penalty Adjustment Rule and the Bodine Memo, the adjusted violation amount is \$7,778. See 83 Fed. Reg. 1190, Bodine Memo at

p. 13.

Count IV: Failure to Assign a Certified Renovator

Firms that perform renovations must ensure that (1) all individuals performing renovation activities are either certified renovators or have been trained by a certified renovator, and (2) a certified renovator is assigned to each renovation and discharges all of the certified renovator responsibilities. 40 C.F.R. § 745.90.

In accordance with the ERPP, for housing units that are not occupied by children less than eighteen years of age, the appropriate extent of harm is minor. The policy also states that the circumstance level for violations of 40 C.F.R. § 745.90 is a Level 3a (medium) violation. Accordingly, under the policy, a gravity-based penalty of \$4,500 should be assessed for this minor, Level 3(a) violation. ERPP at Appendix B, p. B-2. In accordance with the 1.03711 penalty adjustment required by the 2018 Civil Monetary Penalty Adjustment Rule and the Bodine Memo, the adjusted violation amount is \$4,667. See 83 Fed. Reg. 1190, Bodine Memo at p. 13.

Determination of the Adjusted Penalty

The ERPP states that upward or downward adjustments may be made to the gravity-based penalty by considering other factors, including but not limited to Respondent's ability to pay, degree of culpability, prior history and voluntary disclosures of violations. The record does not contain any information to indicate that Respondent has a prior history of TSCA violations or received an economic benefit from the violations. In addition, there is no information in the record that indicates Respondent's degree of culpability, shows voluntary disclosures, or supports other mitigating factors. Accordingly, the Complainant did not make either upward or downward adjustments to the gravity-based penalty.

As discussed above, the Pilot establishes EPA guidelines for adjusting the maximum amount of penalties against respondents that have a pre-tax, unadjusted gross annual income of \$2,000,000 or less or a net worth of \$600,000 or less. According to the July 5, 2017 Hoovers.com profile of Respondent Master Roofing, attached to Complainant's Memorandum in Support of Motion for Default Order as Exhibit 3, Respondent's 2017 annual sales (gross annual revenue) was \$140,000. It therefore qualifies for an adjustment under the Pilot.

The adjustment multiplier is determined by dividing Respondent's gross annual revenue, \$140,000, by 2,000,000. The resulting multiplier, 7%, is then applied to the total ERPP penalty to determine the adjusted penalty. Accordingly, the total penalty amount assessed in the Complaint and Motion for Default, \$19,340, results in a \$1,354 penalty when adjusted by the .07 multiplier.

#### Penalty Calculation

In the Complaint and Motion for Default Order, Complainant proposed the assessment of a civil penalty in the amount of \$1,354.00 against Respondent for its violations of TSCA. 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 and the Pilot equation multiplier of .07.

Utilizing the ERPP, Complainant calculated the proposed penalty as follows:

Count 1 - Failure to Obtain Firm Certification under RRP Rule = \$4,500.00  
Count 2 - Failure to Provide Pre-Renovation Education Information = \$2,840.00  
Count 3 - Failure to Meet Work Practice Standards = \$7,500.00  
Count 4 - Failure to Assign a Certified Renovator = \$ 4,500.00

Complainant neglected, however, to apply the inflation adjustment multiplier to each of these amounts. When the inflation adjustment multiplier is applied to each penalty, the adjusted amounts are as follows:

Count 1 - Failure of to Obtain Firm Certification Under PRP Rule = \$4,667.00  
Count 2 - Failure to Provide Pre-Renovation Education Information = \$2,945.00  
Count 3 - Failure to Meet Work Practice Standards = \$7,778.00  
Count 4 - Failure to Assign a Certified Renovator = \$ 4,667.00

When the Pilot multiplier of .07 is used to adjust these amounts, the total penalty is \$1,404.00.

As noted above, the Consolidated Rules of Practice provide that upon issuing a Default Order, “[t]he 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 statute authorizing the proceeding].” 40 C.F.R. § 22.17(c) [emphasis added]. I find the rationale for the penalty calculation, as set forth in the Complaint and in the Complainant’s Motion for Default, is neither clearly inconsistent with the record of this proceeding nor clearly inconsistent with TSCA, despite the fact that it was not adjusted in accordance with the 2018 Civil Monetary Penalty Adjustment Rule and Bodine Memo. Moreover, Complainant’s failure to apply the inflation adjustment does not prejudice Respondent, and the difference between the amount proposed in the Complaint and Motion for Default and the amount adjusted for inflation is \$50. This de minimis amount is unlikely to improve the deterrence effect of the penalty or further promote compliance with the law. Therefore, in accordance with 40 C.F.R. § 22.17(c), I will assess the \$1,354.00 penalty requested in the Complaint and Motion for Default.

## **ORDER**

In accordance with Section 22.17 of the Consolidated Rules of Practice, 40 C.F.R. § 22.17, and based on the record, the findings of fact and conclusions of law set forth above. I hereby find that Respondent is in **DEFAULT** and liable for a total penalty of **\$1,354.00**.

**IT IS THEREFORE ORDERED** that Respondent, Master Roofing, shall, within thirty days after this Order becomes final under 40 C.F.R. § 22.27(c), submit by cashier's or certified check, payable to the United States Treasurer, payment in the amount of **\$1,354.00**. in one of the following ways:

### **CHECK PAYMENTS:**

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

### **WIRE TRANSFERS:**

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"

### **OVERNIGHT MAIL:**

U.S. 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



**ON LINE PAYMENT:**

There is now an On-Line Payment Option, available through the U.S. Department of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV

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

Additional payment guidance is available at

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

Respondent shall note on the check the title and docket number of this administrative action. Respondent shall serve photocopies of any check or written notification confirming electronic fund transfer or on-line payment to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
Five Post Office Square  
Mail Code 04-6  
Boston, MA 02190-3912

and

Andrea Simpson  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
Five Post Office Square  
Mail Code 04-2  
Boston, MA 02190-3912

Each party shall bear its own costs in bringing or defending this action.

Should Master Roofing fail to pay the penalty specified above in full by its due date, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. 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. Interest will be assessed at the rate of the United States Treasury tax

and loan rate, in accordance with 40 C.F.R. § 102.13(e).

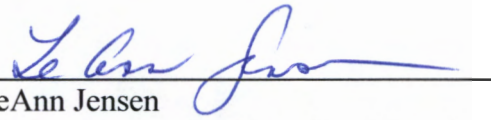
In accordance with 40 C.F.R. § 22.27(a) of the Consolidated Rules of Practice, this Default Order constitutes an Initial Decision. This Initial Decision shall become a Final Order forty five days after its service upon a party, and without further proceedings unless: (1) a party moves to reopen the hearing within twenty days after service of this Initial Decision, pursuant to 40 C.F.R. § 22.28(a); (2) a party appeals the Initial Decision to the Environmental Appeals Board within thirty days after this Initial Decision is served upon the parties; (3) a party moves to set aside a Default Order that constitutes an Initial Decision; or (4) the Environmental Appeals Board elects, upon its own initiative, to review this Initial Decision, pursuant to 40 C.F.R. § 22.30(b).

Within thirty days after the Initial Decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board. 40 C.F.R. § 22.27(a). If a party intends to file a notice of appeal to the Environmental Appeals Board, it should be sent to the following address:

U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals Board (MC 1103B)  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

Where a Respondent fails to appeal an Initial Decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30 of the Consolidated Rules of Practice, and that Initial Decision becomes a Final Order pursuant to 40 C.F.R. § 22.27(c) of the Consolidated Rules, Respondent waives its right to judicial review.

**SO ORDERED, this 18<sup>th</sup> Day of July 2019.**



LeAnn Jensen  
Regional Judicial Officer/Presiding Officer  
U.S. EPA Region 1

In the Matter of Juan C. Garcia  
Docket No. TSCA-01-2017-0060

**CERTIFICATE OF SERVICE**

I certify that on this 18th day of July, 2019 the original foregoing Initial Decision and Default Order was filed with the Regional Hearing Clerk, a copy was hand-delivered to Counsel for Complainant, a copy was mailed overnight and certified mail to Counsel for Respondent, and a copy was mailed overnight to the EAB Clerk of the Board and Assistant Administrator for OECA.

7/18/19  
Date

Wanda I. Santiago  
Wanda I. Santiago  
Paralegal/Regional Hearing Clerk  
U.S. EPA Region I  
5 Post Office Square, Suite 100  
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