

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III  
1650 Arch Street  
Philadelphia, PA 19103

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U.S. EPA.

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APPEALS BOARD

IN THE MATTER OF:

Millennium Quests, Inc.  
d/b/a American Dream Consultants  
116 E. 41st Street  
Norfolk, VA 23504,

Respondent.

Docket No.: TSCA-03-2005-0261

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INITIAL DECISION AND DEFAULT ORDER

This Initial Decision and Default Order is issued in a case brought under the authority of Section 16(a) of the Toxic Substance Control Act, 15 U.S.C. § 2615(a) ("TSCA"). The Associate Director for Enforcement, Waste and Chemicals Management Division for Region III of the United States Environmental Protection Agency ("EPA" or "Complainant"), initiated this action by filing a Complaint pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 40 C.F.R. 745, Subpart E, which alleges that Millennium Quests, Inc. ("Millennium Quests" or "Respondent") failed to comply with regulatory requirements.

The Motion for Default Judgement ("Motion for Default") seeks an Order assessing a civil penalty in the amount of twenty seven thousand five hundred dollars (\$27,500) against Respondent, a Virginia corporation engaged in the commercial and home improvement business.

FINDINGS OF FACT

Pursuant to 40 C.F.R. § 22.17 and based on the entire record, I make the following findings of fact:

1. As set forth in the Complaint, Millennium Quests is a Virginia corporation engaged in the commercial and home improvement business. Respondent engaged in the improvement

of a residential property built prior to 1978, or "target housing," located at 116 E. 41<sup>st</sup> Street, Norfolk, Virginia ("target housing"). "Target housing" is described as any housing constructed prior to 1978, except housing for the elderly or persons with disability (unless any child who is less than six years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling. 15 U.S.C. § 2681(17); 40 C.F.R. § 745.103.

2. On September 2, 2003, the Respondent entered into a contract with a "target housing" owner to perform renovation activities including work which required the modification of the existing structure, and the disturbance, removal, and modification of painted surfaces. Complaint ¶¶ 30-33.
3. Two children, ages two and a half years and seven and a half months, resided in the target housing. Complaint ¶ 28 and Section VII.
4. At no time prior to the renovations did the Respondent supply the "target housing" owner with a full and complete copy of the EPA lead hazard information pamphlet developed under section 406(a) of TSCA or any other EPA-approved state or tribal pamphlet that has been developed for the same purpose. Complaint ¶¶ 42, 45.
5. The renovation activities were not minor repairs and maintenance activities that disrupted two square feet or less of painted surface. Complaint ¶ 38.
6. On August 24, 2005, an Administrative Complaint and Notice of Opportunity for Hearing was issued by EPA, the Complainant, pursuant to Section 16(a) of the Toxic Substance Control Act, 15 U.S.C. § 2615(a), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules").

7. The Complaint alleged that Respondent violated TSCA by failing to provide a copy of the EPA pamphlet, or any State or Tribal pamphlet, to the target housing owner, as required by 40 C.F.R. § 745.85(a)(1), and that such a violation is subject to civil sanctions pursuant to TSCA Section 16, 15 U.S.C. § 2615.
8. The Complaint proposed to assess a penalty of twenty seven thousand five hundred dollars (\$27,500) for this alleged violation.
9. 40 C.F.R. § 22.15(a) states that a respondent has a right to request a hearing and that, in order to avoid being in default, a respondent is required to file a response to the complaint within thirty days of service.
10. 40 C.F.R. § 22.17(a) states that an order of default may be issued "after motion, upon failure to file a timely answer to the complaint..... Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations."
11. As stated in the Motion for Default, Complainant successfully served the Complaint on the Respondent by certified mail at three known addresses as evidenced by three return receipt cards attached to the Motion for Default as Exhibits C, D, and E.
12. Respondent did not file an Answer to the Complaint within thirty (30) days of service and has not, to date, filed an Answer or other response to the Complaint.
13. On February 3, 2006, Complainant filed a Motion for Default stating that Respondent failed to file an Answer to the Complaint.
14. On February 3, 2006, the Motion for Default was mailed via certified mail to the Respondent.

15. The Respondent did not file a response to the Motion for Default./

### CONCLUSIONS OF LAW

Pursuant to 40 C.F.R. § 22.17 and based on the entire record, I make the following conclusions of law:

1. The Complaint in this action was lawfully and properly served upon Respondent in accordance with the Consolidated Rules, 40 C.F.R. § 22.5(b)(1).
2. Respondent was required to file an Answer to the Complaint within thirty (30) days of service of the Complaint. 40 C.F.R. § 22.15(a).
3. Respondent failed to file an Answer to the Complaint and such failure to file an Answer to the Complaint or otherwise respond to the Complaint on the record constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations. 40 C.F.R. § 22.17(a).
4. Complainant's Motion for Default was lawfully and properly served on Respondent. 40 C.F.R. § 22.7(c).
5. Respondent failed to respond to the Motion for Default and such failure to respond to the Motion for Default is deemed to be a waiver of any objection to the granting of the Motion. 40 C.F.R. § 22.16(b).
6. Respondent is a "person" within the meaning of 40 C.F.R. § 745.83.

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1. The Regional Judicial Officer received a letter from the President of Millennium Quests, Inc. which set forth the Respondent's bankruptcy status. The letter did not substantively respond to either the Complaint or Motion for Default Order. More importantly, the letter is not part of the record because its submission did not comply with the Consolidated Rules, 40 C.F.R. Part 22. Specifically, it, along with one copy of each document, was not sent to the Regional Hearing Clerk and therefore it does not appear that the letter was intended to be part of the record. See 40 C.F.R. § 22.5(a)(1).

7. The residential dwelling located at 116 E. 41st Street, Norfolk, VA 23504 was “target housing” within the meaning of TSCA Section 401(17), 15 U.S.C. §2681(17), and 40 C.F.R.3 § 745.130.
8. Respondent, as renovator, was required to provide the owner of “target housing” with a full and complete copy of the EPA-approved lead hazard information pamphlet before beginning renovations. 40 C.F.R. § 745.85(a)(1).<sup>2</sup>
9. Respondent, as renovator, was required to either (1) obtain from the owner a written acknowledgement that the owner received a pamphlet or (2) obtain a certificate of mailing at least seven days prior to the renovation. 40 C.F.R. §§ 745.85(a)(1)(i) and (ii).
10. Respondent failed to obtain from the owner a written acknowledgement that the owner received an EPA-approved lead hazard pamphlet or obtain a certificate of mailing at least seven days prior to the renovation. Complaint ¶ 46.
11. Respondent, as renovator, failed to provide an EPA-approved lead hazard information pamphlet at any time before Respondent began renovation activities. Complaint ¶ 45.
12. Pursuant to 40 C.F.R. § 745.87(a) and (d), Respondent’s failure to provide a copy of an EPA-approved pamphlet to “Target housing” owner as required by 40 C.F.R. § 745.85(a)(1), and to either obtain from the owner a written acknowledgement that the owner has received a pamphlet or obtain a certificate of mailing at least seven days prior to the renovation, was a violation of TSCA Section 409, 15 U.S.C. § 2689, and subjects Respondent to civil sanctions pursuant to TSCA Section 16, 15 U.S.C. § 2615.

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2. 40 CFR § 745.85 was redesignated and amended at 73 FR 21760, Apr 22, 2008 to 40 CFR § 745.84. All references in this Order are to the citations to the regulations in effect at the time the Complaint was filed.

### DETERMINATION OF CIVIL PENALTY AMOUNT

Complainant requests the assessment of a penalty of twenty seven thousand five hundred dollars (\$27,500) for the violation set forth in the Complaint. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1) authorizes the assessment of a civil penalty in the maximum amount of \$25,000. This amount has been adjusted to \$27,500 per violation under the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19.

The \$27,500 penalty is based on the analysis of the statutory factors in Section 16 of TSCA. Section 16 of TSCA provides that “[i]n determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent, gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue in business, any history of such prior violations, the degree of culpability, and such other matters as justice may require.” 15 U.S.C. § 2615(a)(2)(B).

To develop the civil penalty proposed in the Complaint, the Complainant relied, in part, on the EPA’s March 10, 1980 *Guidelines for the Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act: PCB Penalty Policy*, as published in the Federal Register at 45 Fed. Reg. 59770 (September 10, 1980) (hereinafter, “Civil Penalty Guidelines”). In the absence of regulation-specific penalty assessment guidance, the Civil Penalty Guidelines set forth a general penalty assessment policy by establishing “standardized definitions and application of the statutory factors that the [Toxic Substances Control] Act requires the Administrator to consider in assessing a penalty.” 45 Fed. Reg. at 59770.

**Nature of the Violation:** The Civil Penalty Guidelines discuss the nature of the violation as the “essential character” or “essence” of the violation and incorporate the concept of whether the

violation is of a “chemical control, control-associated data gathering, or hazard assessment nature.” 45 Fed. Reg. at 59771. Furthermore, “[c]hemical control regulations are aimed at minimizing the risk presented by a chemical substance.” The nature of the violation has “a direct effect on the measure used to determine which ‘extent’ and ‘circumstances’ categories are selected”. Id.

The requirements of 40 C.F.R. Part 745, Subpart E, most appropriately are characterized as “hazard assessment” in nature. In other words, they are “used to develop and gather information necessary to intelligently weigh and assess the risks and benefits presented by particular chemical substances.” As noted in the Preamble of the Final Rule entitled “Lead; Requirements for Hazard Education Before Renovation of Target Housing” (63 Fed. Reg. 29907-29921, June 1, 1998) (hereinafter, “Final Rule”), the specific purpose of the Pre-Renovation regulation is to require those who perform renovations of target housing for compensation to provide a lead hazard information pamphlet to owners and occupants of such housing prior to commencing the renovation. The purpose of providing such information is to ensure that such owners and occupants are provided information as to the potential hazards of lead-based paint exposure before renovations are begun on that housing and are advised to take appropriate precautions to avoid exposure to lead-contaminated dust and lead-based paint debris that are sometimes generated during renovations. It is clear that EPA has determined that pre-renovation distribution of the lead-hazard information pamphlet would help reduce the exposures which cause serious lead poisonings, especially in children under age six (6), who are particularly susceptible to the hazards of lead. 63 Fed. Reg. at 29908.

In the present instance, the “nature” of the Respondent’s violation was its failure to provide the Target Housing owner and occupant with a copy of the EPA pamphlet, or with a

copy of any State or Tribal pamphlet, at any time before or during target housing renovation activities.

**Extent of the Violation:** The extent of a violation is the term generally used to describe the “degree, range or scope of a violation.” 45 Fed. Reg. at 59771. For “hazard assessment violations,” the Civil Penalty Guidelines recognize that the degree of danger or “hazard” presented by the substance in question may not be known, such that the measure of “extent” of harm “will focus on the goals of the given hazard assessment regulation and the types of harm it is designed to prevent.” 45 Fed. Reg. at 59772.

The EPA has generally characterized the “extent” of any violation on the basis of whether that violation is considered to represent a “serious”, “significant” or a “lesser” amount of potential damage to human health or to the environment and, correspondingly, considers the “extent” of any violation to be “major,” “significant,” or “minor.” See e.g. EPA’s February, 2000 Real Estate Notification and Disclosure Rule: Final Enforcement Response Policy, Chapter 5, Section III.

“Major” extent violations generally include violations that have the potential to cause serious damage to human health or major damage to the environment. Lead poisoning can cause reduced intelligence quotients, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and other behavioral problems. Severe lead poisoning can result in organ damage and even death. Children under six (6) years old have been found to be especially vulnerable to the dangerous effects of lead poisoning, which can impair the proper neurological development that occurs at this age. Therefore, violations creating the potential of lead-hazard exposure and of lead poisoning in young children generally are deemed to be serious and of “major” extent. See 63 Fed. Reg. at 29908-10.



In this matter, children ages two and a half years and seven and a half months old, respectively, resided in the Target Housing at the time that Respondent commenced renovation activities. The violation at issue thus created a significant potential that one or more young children under the age of six (6) years would be exposed to lead hazards and were at risk of developing lead poisoning. Therefore, I find that the extent of the violation at issue to be "serious."

**Circumstances of the Violation:** The circumstances of a violation generally refer to the probability of the assigned level of "extent" actually occurring. 45 Fed. Reg. at 59772. The circumstances of the violation are considered to be "high" if the violation presents a high probability that damage will occur. Id. The probability of harm is based upon the "risk inherent in the violation as it was committed" and "a violation which presented a high probability of causing harm when it was committed must be classified as a 'high probability' violation and penalized as such, even if through some fortuity no actual harm resulted in that particular case." Id.

For Pre-Renovation Rule violations, the level of potential harm directly relates to the lack of lead-based paint and lead-based paint hazard knowledge that an owner and/or occupant of target housing has at the time of renovation activities as a result of a renovator's failure to timely disclose the required information. The greater the renovator's deviation from the regulatory requirements the more likely it becomes that an owner or occupant of the target housing will be uninformed about the hazards associated with lead-based paint.

Congress recognized that lead poisoning is a particular threat to children under age six (6) and emphasized the needs of this vulnerable population. 63 Fed. Reg. at 29908. Therefore, the

probability or likelihood of harm associated with any Pre-Renovation Rule violation is deemed to be greater and more significant as the likelihood of a child's exposure to lead-based paint hazards is increased.

Here, the Target Housing owner was not made aware of or otherwise provided with required information as to the potential hazards of lead-based paint, exposure to lead contaminated dust and lead-based paint debris that are sometimes generated during renovations. At the time that Respondent initiated renovation activities, the Target Housing owner, the Target Housing owner's spouse and their two (2) children under six (6) years old resided within the Target Housing. These "circumstances" support a finding of a high probability that the violation was likely to cause damage.

**Gravity of the Violation:** Gravity generally refers to the overall seriousness of a violation upon full consideration of the "nature" and "circumstances" of the violation and the "extent" of the harm that may result from such a violation. Section III-A of the Federal Register Notice Preamble to the Final Rule includes a discussion of Lead Poisoning in the United States that identifies the serious health effects associated with lead exposure. See 63 Fed. Reg. at 29909-10. In light of the serious health concerns attributed to lead exposure, as previously discussed, violations that may lead to, or result in, young children becoming exposed are violations that are very serious and of high gravity.

Upon consideration of the nature and circumstances of the violation and the extent of the potential harm, I find the overall gravity of the violation to be high and very serious.

**Ability to Pay:** Complainant asserts that after looking into Respondent's business reports, it is without sufficient information to make any determination as to Respondent's ability to pay the

proposed penalty. Complaint, Page 21.

The burden to raise and prove an inability to pay a penalty rests with the Respondent. With the record being devoid of any evidence to the contrary, the Respondent is deemed able to pay the maximum statutory penalty. 56 Fed. Reg. 29996, 30006 (July 1, 1991). See also In the Matter of: Mr. William J. Fabrick, 3225 Old Westminister Pike, Finksburg, Maryland 21048, No. CWA-III-208, 2000 WL 1660911 (E.P.A. Apr. 25, 2000).

Furthermore, the EPA Environmental Appeals Board ("EAB") has held that even where a respondent claims to be in bankruptcy (a claim not supported by the record in the present instance), a penalty may nonetheless be assessed because the respondent may be capable of paying the penalty after the bankruptcy reorganization process concludes. See New Waterbury, Ltd., 5 E.A.D. 529, 540, n.19 (EAB 1994); see also In re Britton Constr. Co., 8 E.A.D. 261, 292, n.21 (EAB 1999).

**Effect on Violator's Ability to Continue to do Business:** Complainant states it is also without sufficient information to determine the effect of the proposed penalty on Respondent's ability to continue to do business. Complainant asserts, however, that the issue may be moot because of an April 19, 2005, determination by the Board of Contractors of the Virginia Department of Professional and Occupational Regulation which has resulted in the revocation of Respondent's contractor license. Complaint, Part VII, B, 6.

The effect on a violator's ability to continue to do business is closely related to a violator's ability to pay. Since the official record is void of any information about Respondent's financial status, I find that Respondent is able to pay.

**History of Prior Such Violations:** As noted in the Civil Penalty Guidelines, the Agency's policy is to interpret "prior such violations" as referring only to prior violations of TSCA. 45 Fed. Reg. at 59773. Complainant has not offered and the record does not otherwise reflect any evidence of other TSCA violations on the part of Respondent.

**Degree of Culpability:** Two principle criteria for assessing culpability are a violator's knowledge of the particular TSCA requirement and the degree of the violator's control over the conduct. 45 Fed. Reg. at 59773. Furthermore, attitude, which includes an assessment of whether the violator is making good faith efforts to comply with the regulations and/or is prompt in taking corrective actions, can be indicative of a violator's degree of culpability. *Id.*

Here, there is no indication that Respondent made any good faith efforts to comply with applicable requirements during its Target Housing renovation activities. Respondent had complete control over its conduct and it knew or should have known about the potential dangers of its renovation activities in Target Housing. There is nothing in the record indicating that Respondent initiated any corrective actions to abate the lead hazard that it created within the Target Housing or that it provided assistance to EPA or to local regulatory agencies to assist in minimizing harm to the environment.

**Other Matter as Justice May Require:** In the present case, the record reflects that young children were exposed to serious health risks. Justice requires a penalty that serves as a deterrent to Respondent and to any other similarly situated persons. Therefore, I have determined that the penalty amount of \$27,500 proposed by the Complainant is appropriate based on the record and on Section 16(a) of the Toxic Substance Control Act, 15 U.S.C. § 2615(a). The penalty amount

takes into account the significance of the violation including the substantial risk to the health of children.

### ORDER

Pursuant to the Consolidated Rules at 40 C.F.R. Part 22, including 40 C.F.R. § 22.17, Complainant's Motion for Default is hereby GRANTED and Respondent is hereby ORDERED as follows:

1. Respondent, Millennium Quests, Inc., is hereby assessed a civil penalty in the amount of twenty seven thousand five hundred dollars (\$27,500) 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. See ¶ 6 below. Respondent may use the following means for penalty payments:

- a. All payments made by certified or cashier's check and sent by regular mail shall be addressed and mailed to:

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

Contact: Natalie Pearson, 314-418-4087

- b. All payments made by certified or cashier's check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-4087

- c. 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"

(For Customer Service, dial 212-720-5000)

- d. All payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17th Street, NW  
Washington, DC 20074  
Contact: Jesse White 301-887-6548

ABA = 051036706  
Transaction Code 22 - Checking  
Environmental Protection Agency  
Account 310006  
CTX Format

(For Customer Service, dial 800-762-4224)

- e. All payments made online can be made at:

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

- f. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment\\_cin.htm](http://www.epa.gov/ocfo/finservices/make_a_payment_cin.htm)

3. At the same time that payment is made, Respondent shall mail copies of any

corresponding check, or written notification confirming any electronic wire transfer to:

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

and

A.J. D'Angelo  
Senior Assistant Regional Counsel  
U.S. EPA Region III (Mail Code: 3RC30)  
1650 Arch Street  
Philadelphia, PA 19103-2029

A transmittal letter identifying the name and docket number should accompany both the remittance and/or a copy of the check and a copy of Respondent's electronic wire transfer.

4. In the event of failure by Respondent to make payment as directed above, this matter may be referred to a United States Attorney for recovery by appropriate action in United States District Court.
5. Pursuant to the Debt Collection Act, 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debt owed to the United States and to assess 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 unless (1) a party appeals this Initial

Decision to the EPA Environmental Appeals Board in accordance with 40 C.F.R.

§ 22.30,<sup>3</sup> (2) a party moves to set aside the Default Order that constitutes this Initial Decision, or (3) the Environmental Appeals Board elects to review the Initial Decision on its own initiative.

IT IS SO ORDERED.

12/31/08  
Date

Renee Sarajian  
Renee Sarajian  
Regional Judicial Officer/Presiding Officer

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3. Under 40 CFR § 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 days** after this Initial Decision is served upon the parties.



CERTIFICATE OF SERVICE

This Initial Decision and Default Order was served on the date below, by the manner indicated, to the following people:

VIA HAND DELIVERY:

A.J. D'Angelo (3RC30)  
Senior Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103

VIA CERTIFIED MAIL/  
RETURN RECEIPT REQUESTED:

Tanya Copeland, President  
Millennium Quests, Inc.  
P.O. Box 1872  
Norfolk, VA 23501-1872

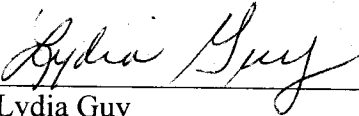
Tanya Copeland, President  
Millennium Quests, Inc.  
877 Marietta Ave.  
Norfolk, VA 23513-3125

VIA POUCH MAIL:

Eurika Durr  
Clerk of the Board, Environmental Appeals Board (MC 1103B)  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

DEC 31 2008

Date

  
Lydia Guy  
Regional Hearing Clerk  
Region III, EPA

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EPA REGION III, PHILADELPHIA, PA