

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of: Stephen Pearson d/b/a Pearson Custom Homes 30 Wayside Avenue Byfield, MA 01922 Respondent. Proceeding under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a)	<p style="text-align:center">Docket No. TSCA-01-2018-0015</p>
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PROPOSED DEFAULT ORDER

I. Introduction

This proceeding was commenced on September 28, 2018, with the filing of a Complaint by the Complainant, the United States Environmental Protection Agency, Region 1 (“EPA”), against Respondent, Stephen Pearson d/b/a Pearson Custom Homes. The Complaint charges Respondent with one violation of Section 409 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 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 at 40 C.F.R. Part 745, Subpart E (the “Renovation, Repair and Painting Rule” or “RRP Rule”). The Complaint proposed a total penalty of \$4,667.

Service of the Complaint was completed on October 4, 2018. To date, Respondent has not filed an Answer and has not requested an extension of time for filing an Answer. For the reasons set out below, Respondent is found to be in default pursuant to section 22.17(a) of the Rules of Practice, 40 C.F.R. 22.17(a), and is assessed the proposed penalty of \$4,667.

II. Findings of Fact and Conclusions of Law

1. The Complainant is the U.S. Environmental Protection Agency (EPA), Region 1.
2. The Respondent is Stephen Pearson d/b/a Pearson Custom Homes, a sole proprietorship in Massachusetts with a business address at 30 Wayside Avenue, Byfield, Massachusetts, 01922, which is also the address of its principal owner and operator, Stephen Pearson.

3. Forty C.F.R. § 745.81(a)(2)(ii) provides that “[o]n or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (c).”
4. Forty C.F.R. § 745.89(a) provides that “[f]irms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.”
5. In 2016, Respondent was hired to renovate the residential building at 217 Bartlett Street in Portsmouth, New Hampshire (“217 Bartlett St.”), which was constructed in 1900, to convert the building into condominiums.
6. The work done by Respondent at 217 Bartlett St. came to the attention of EPA via a referral from the New Hampshire Department of Health and Human Services (“NHDHHS”). NHDHHS learned of Respondent’s work through a complaint by a neighbor of the building whose property was being affected by dust from Respondent’s demolition activities.
7. On December 9, 2016, EPA representatives conducted an inspection at the 217 Bartlett St. building while Respondent was performing work at the property. The inspectors found that the interior of the vacant building had been stripped down to the studs with all walls and painted surfaces heavily disturbed by demolition work.
8. During the EPA Inspection, Mr. Stephen Pearson admitted to the EPA representatives that Respondent was not a certified firm as required by the RRP Rule.
9. On March 16, 2018, EPA Region 1 issued to Respondent by Certified Mail - Return Receipt Requested, a “Notice of Investigation Results – Federal Lead-based Paint Requirements” and an “Expedited Settlement Agreement,” (“Notice and ESA Package”) that addressed a single RRP Rule violation, consistent with the EPA Office of Enforcement and Compliance Assurance’s August 19, 2015 Lead-Based Paint Expedited Settlement Agreement Policy. According to a signed receipt, Respondent received the Notice and ESA Package on April 2, 2018. Despite additional attempts by EPA by telephone and email to request a response from Respondent, EPA received no response to its offer of expedited settlement.
10. On September 21, 2018, EPA received a copy of a report written by American Environmental Testing Services of New England regarding lead testing on dust and soil samples taken from the interior and exterior of 217 Bartlett St. on December 6, 2016. The report indicates the presence of lead in the dust and soil samples.
11. The building located at 217 Bartlett St., having been built before 1978, was “target housing,” as defined in Section 401(17) of TSCA and 40 C.F.R. § 745.103. Furthermore, the building does not satisfy the requirements for an exemption to the provisions of the Act, TSCA (including 15 U.S.C. § 2681(17)), or the RRP Rule (including 40 C.F.R. § 745.82).
12. Respondent’s demolition activities at 217 Bartlett St. constituted a “renovation,” as defined in 40 C.F.R. § 745.83.

13. Respondent's demolition activities at 217 Bartlett St. constituted a "renovation for compensation" subject to the RRP Rule. See 40 C.F.R. § 745.82. Furthermore, the renovation at 217 Bartlett St. did not satisfy the requirements for an exemption to the provisions of TSCA or the RRP Rule.

14. At the time of the EPA Inspection, Respondent was a "renovator" as defined in 40 C.F.R. § 745.83.

15. At the time of the EPA Inspection, Respondent was a "firm," as defined in 40 C.F.R. § 745.83.

16. At the time of the EPA Inspection, Respondent had not applied for or received RRP firm certification from the EPA.

17. Respondent's failure to obtain RRP firm certification prior to performing renovation work at 217 Bartlett St. constitutes a violation of 40 C.F.R. §§ 745.89(a) and 745.81(a)(2)(ii).

18. The above-listed violation is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87(a), and is a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

III. Determination of Civil Penalty Amount

19. Section 22.17(c) of the Consolidated Rules of Practice provides in pertinent part that upon issuing a default "[t]he relief proposed in the complaint ... shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act." 40 C.F.R. § 22.17(c).

20. Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d, and 40 C.F.R. § 745.118(f) authorize the assessment of a civil penalty of up to \$10,000 for each violation, as adjusted up to \$17,395, by the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. § 19.4. See 83 Fed. Reg. 1190 (Jan. 10, 2018).

21. 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.

22. EPA has issued guidelines for penalties under EPA's August 2010 Interim Final Policy entitled, "Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule" (the "LBP Consolidated ERPP").

23. Respondent's violation under the RRP was considered "minor" because there were no

children under the age of 18 or pregnant women living in the target housing at the time of the violations. Based on this information, I have determined that \$4,667, the proposed penalty, is the appropriate civil penalty to be assessed against Respondent in that it is neither clearly inconsistent with the record of the proceeding nor clearly inconsistent with the Act.

24. In doing so, I have taken into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to Respondent, the 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, which are all factors identified by Section 16(a)(2)(B), 15 U.S.C. § 2615(a)(2).

25. In assessing this penalty, I find persuasive the rationale for the calculations of the assessed penalty set forth in the Complaint, Attachment I of the Complaint, and in the Complainant's Memorandum in Support of Motion for Default Order filed in this proceeding and incorporate such rationale by reference into this Order.

III. Order

1. For failing to file an Answer to the Complaint, Respondent is hereby found in **DEFAULT**.
2. Respondent, Stephen Pearson d/b/a Pearson Custom Homes, is assessed a civil administrative penalty in the amount of \$4,667.
3. Payment of the full amount of this civil penalty shall be made within thirty (30) days after this Initial Decision becomes a final order under 40 C.F.R. § 22.27(c), as provided below. Payment shall be made by submitting a certified or cashier's check in the amount of \$4,667, payable to "Treasurer, United States of America," and mailed to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
P.O. Box 360197M
Pittsburgh, PA 15251
4. A transmittal letter identifying the subject case and EPA docket number as well as Respondent's name and address, must accompany the check.
5. If Respondent fails to pay the penalty within the prescribed statutory period after entry of this Order, interest on the penalty may be assessed. See 31 U.S.C. § 3717; 40 C.F.R. § 13.11.
6. Pursuant to 40 C.F.R. § 22.27(c), this Initial Decision shall become a final order forty-five (45) days after its service upon the parties and without further proceedings unless (1) a party moves to reopen the hearing within twenty (20) days after service of this initial decision, pursuant to 40 C.F.R. § 22.28(a); (2) an appeal to the Environmental Appeals Board is taken within thirty (30) days after this Initial Decision is served upon the parties; or (3) the Environmental Appeals Board elects, upon its own initiative, to review this Initial Decision,

pursuant to 40 C.F.R. § 22.30(b).

LeAnn Jensen
Regional Judicial Officer

Dated: _____