

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN RE:	)	DOCKET NO. TSCA-03-2019-0058
)	
Bottos Construction, Inc.	)	ADMINISTRATIVE COMPLAINT
1005 Sussex Boulevard	)	AND NOTICE OF OPPORTUNITY
Broomall, PA 19008	)	FOR HEARING
)	
Respondent,	)	Proceeding Under Section 16(a) of
	)	the Toxic Substances Control Act
822 S. 5th Street, Philadelphia, PA	)	15 U.S.C. § 2615(a).
815 N. Woodbine Ave, Narberth, PA)	
1602 Bainbridge Street, Philadelphia, PA)	
2023-25 Rittenhouse Square, Philadelphia, PA)	
)	
Target Housing.)	

ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

I. INTRODUCTION

This Administrative Complaint and Notice of Opportunity for a Hearing (“Complaint”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency, (“EPA” or the “Agency”) by Sections 16(a) and 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2615(a) and 2689, the federal regulations set forth at 40 C.F.R. Part 745, Subpart E, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. The Administrator has delegated this authority, under TSCA, to the Regional Administrators, and this authority has been further delegated in the U.S. EPA Region III to, *inter alia*, the Director of the Land and Chemicals Division (“Complainant”), pursuant to EPA Region III Delegation No. 12-2-A.

The Respondent in this action is Bottos Construction, Inc. of Broomall, Pennsylvania (“Respondent”). This Complaint alleges violations by Respondent of Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart E - *Residential Property Renovation* in connection with renovations conducted at target housing, described more fully in paragraphs 1 through 85 of this Complaint.

Pursuant to Section 409 of TSCA, 15 U.S.C. § 2689, it is unlawful for any person to fail or to refuse to comply with a provision of Section 401 through 412 of TSCA, 15 U.S.C. §§ 2681 through 2692, or with any rule issued thereunder. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), any person who violates a provision of Section 409 of TSCA, 15 U.S.C. § 2689 shall be liable for a civil penalty.

II. JURISDICTION, BACKGROUND AND DEFINITIONS

1. EPA and the Office of Administrative Law Judges have jurisdiction over the above-captioned matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689, 40 C.F.R. § 745.87, and 40 C.F.R. §§ 22.1(a)(5) and 22.4.
2. In 1992, Congress enacted the Residential Lead-Based Paint Hazard Reduction Act (“RLBPHRA”), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards in residential housing. The RLBPHRA amended TSCA by adding *Subchapter IV - Lead Exposure Reduction*, Sections 401 through 412 of TSCA, 15 U.S.C. §§ 2681 through 2692, which provides authority for the Administrator of EPA to promulgate implementing regulations. EPA’s 40 C.F.R. Part 745, Subpart E - *Residential Property Renovation* regulations (“RRP Rule”) were promulgated under the authority of TSCA *Subchapter IV - Lead Exposure Reduction* in rulemaking actions published on June 1, 1998 (63

Fed. Reg. 29919), April 22, 2008 (73 Fed. Reg. 21758), March 20, 2009 (74 Fed. Reg. 11869), May 6, 2010 (75 Fed. Reg. 24818), and August 5, 2011 (76 Fed. Reg. 47938).

3. Pursuant to 40 C.F.R. § 745.82, the requirements of the RRP Rule apply to all renovations performed for compensation in target housing, except as described in 40 C.F.R. §§ 745.82(a) and (b).

4. Pursuant to 40 C.F.R. § 745.83, the term “person” means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

5. Pursuant to 40 C.F.R. § 745.83, the term “firm” means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

6. Pursuant to 40 C.F.R. § 745.83, the term “renovation” means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by 40 C.F.R. § 745.223. The term “renovation” includes (but is not limited to): the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather stripping), and interim controls that disturb painted surfaces. The term renovation does not include minor repair and maintenance activities.

7. Pursuant to 40 C.F.R. § 745.83, the term “minor repair and maintenance activities” means activities, including minor heating, ventilation or air condition work, electrical work, and plumbing, that disrupt 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.
8. 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.
9. Pursuant to 40 C.F.R. § 745.103 and Section 401(17) of TSCA, 15 U.S.C. § 2681(17), 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.
10. Pursuant to 40 C.F.R. § 745.103, the term “housing for the elderly” means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.
11. Pursuant to 40 C.F.R. § 745.103, the term “0-bedroom dwelling” means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

III. GENERAL ALLEGATIONS

12. At all times relevant to the violations alleged in this Complaint, Respondent was a Pennsylvania corporation with a principle place of business located at 1005 Sussex Boulevard in Broomall, Pennsylvania.
13. At all times relevant to the violations alleged in this Complaint, Respondent was a “person” as that term is defined at 40 C.F.R. § 745.83.
14. At all times relevant to the violations alleged in this Complaint, Respondent was a “firm” as that term is defined by 40 C.F.R. § 745.83.
15. On May 19, 2017, duly designated representatives of EPA conducted an inspection to determine Respondent’s level of compliance with the RRP Rule pursuant to Section 11 of TSCA, 15 U.S.C. § 2610.
16. Prior to the May 19, 2017 inspection, EPA sent an inspection confirmation letter dated April 26, 2017 requesting that Respondent have available for review and collection specified documents including *inter alia* “[a] list of all residential properties or child occupied facilities built before 1978 where renovation, remodeling, or other work which disturbed more than 6 square feet of paint for interior renovations or more than 20 square feet of paint for exterior renovations was conducted by you, employees of your company or contracted” from January 1, 2016 to present; and “[c]opies of all contracts [pertaining to the renovations on the list], including any attachments and contract modifications/addendums, receipts and copies of permits.”
17. During the May 19, 2017 inspection, Respondent made available for review and EPA inspectors collected documentation in connection with work conducted or subcontracted by Respondent at the following residential properties:
 - a. 822 S. 5th Street, Philadelphia, Pennsylvania;
 - b. 815 N. Woodbine Ave, Narberth, Pennsylvania;

- c. 1602 Bainbridge Street, Philadelphia, Pennsylvania; and
- d. 2023-25 Rittenhouse Square, Philadelphia, Pennsylvania.

822 S. 5th Street, Philadelphia, Pennsylvania

18. The information collected in connection with the work conducted at 822 S. 5th Street in Philadelphia, Pennsylvania included an invoice dated September 22, 2016 billed to Respondent's customer, and an invoice dated October 12, 2016 billed to Respondent by its subcontractor.
19. Respondent's September 22, 2016 invoice specifies a dollar amount due to Respondent for activities enumerated as "Demo", "Windows & Trim", "Interior Walls" as well as other activities conducted or subcontracted by Respondent; and also includes a hand-written estimate of "1000 sf" by Respondent as the approximate amount of painted surface disturbed.
20. The October 12, 2016 invoice of Respondent's subcontractor describes activities conducted by Respondent's subcontractor as including the removal of 5.74 tons of debris.
21. The work conducted or subcontracted by Respondent at 822 S. 5th Street in Philadelphia, Pennsylvania was a "renovation" as that term is defined by 40 C.F.R. § 745.83.
22. The residential property located at 822 S. 5th Street in Philadelphia, Pennsylvania was built prior to 1978.
23. At all times relevant to the violations alleged in this Complaint, the residential property located at 822 S. 5th Street in Philadelphia, Pennsylvania was not "housing for the elderly" as that term is defined by 40 C.F.R. § 745.103.
24. At all times relevant to the violations alleged in this Complaint, the residential property located at 822 S. 5th Street in Philadelphia, Pennsylvania was not housing for persons with disabilities.
25. At all times relevant to the violations alleged in this Complaint, the residential property located at 822 S. 5th Street in Philadelphia, Pennsylvania was not a "0-bedroom dwelling" as

that term is defined by 40 C.F.R. § 745.103.

26. At all times relevant to the violations alleged in this Complaint, the residential property located at 822 S. 5th Street in Philadelphia, Pennsylvania was “target housing” as that term is defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

27. The work conducted or subcontracted by Respondent at 822 S. 5th Street in Philadelphia, Pennsylvania was a ‘renovation performed for compensation at target housing’ as described in 40 C.F.R. § 745.82.

28. At the time of the violations alleged in this Complaint, the painted components affected by the renovation performed at 822 S. 5th Street in Philadelphia, Pennsylvania were not determined to be free of lead-based paint by any of the methods described in 40 C.F.R. § 745.82(a).

29. The renovation at 822 S. 5th Street in Philadelphia, Pennsylvania was not an emergency renovation as described by 40 C.F.R. § 745.82(b).

815 N. Woodbine Ave, Narberth, Pennsylvania

30. The information collected in connection with the work conducted at 815 N. Woodbine Ave in Narberth, Pennsylvania included an invoice dated March 4, 2016 billed to Respondent’s customer, and an invoice dated June 8, 2016 billed to Respondent by its subcontractor.

31. Respondent’s March 4, 2016 invoice specifies a dollar amount due to Respondent for activities enumerated as “GENERAL DEMOLITION”, “open ceiling/walls” as well as other activities conducted or subcontracted by Respondent; and also includes a hand-written estimate of “500 sf” by Respondent as the approximate amount of painted surface disturbed.

32. The June 8, 2016 invoice of Respondent’s subcontractor describes activities conducted by Respondent’s subcontractor as including bathroom demolition work involving 3.68 tons (debris).

33. The work conducted or subcontracted by Respondent at 815 N. Woodbine Ave in Narberth, Pennsylvania was a “renovation” as that term is defined by 40 C.F.R. § 745.83.

34. The residential property located at 815 N. Woodbine Ave in Narberth, Pennsylvania was built prior to 1978.

35. At all times relevant to the violations alleged in this Complaint, the residential property located at 815 N. Woodbine Ave in Narberth, Pennsylvania was not “housing for the elderly” as that term is defined by 40 C.F.R. § 745.103.

36. At all times relevant to the violations alleged in this Complaint, the residential property located at 815 N. Woodbine Ave in Narberth, Pennsylvania was not housing for persons with disabilities.

37. At all times relevant to the violations alleged in this Complaint, the residential property located at 815 N. Woodbine Ave in Narberth, Pennsylvania was not a “0-bedroom dwelling” as that term is defined by 40 C.F.R. § 745.103.

38. At all times relevant to the violations alleged in this Complaint, the residential property located at 815 N. Woodbine Ave in Narberth, Pennsylvania was “target housing” as that term is defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

39. The work conducted or subcontracted by Respondent at 815 N. Woodbine Ave in Narberth, Pennsylvania was a ‘renovation performed for compensation at target housing’ as described in 40 C.F.R. § 745.82.

40. At the time of the violations alleged in this Complaint, the painted components affected by the renovation performed at 815 N. Woodbine Ave in Narberth, Pennsylvania were not determined to be free of lead-based paint by any of the methods described in 40 C.F.R. § 745.82(a).

41. The renovation performed at 815 N. Woodbine Ave in Narberth, Pennsylvania was not an emergency renovation as described by 40 C.F.R. § 745.82(b).

1602 Bainbridge Street, Philadelphia, Pennsylvania

42. The information collected in connection with the work conducted at 1602 Bainbridge Street in Philadelphia, Pennsylvania included an invoice dated October 16, 2016 billed to Respondent's customer, and an invoice dated October 12, 2016 billed to Respondent by its subcontractor.

43. Respondent's October 16, 2016 invoice specifies a dollar amount due to Respondent for activities enumerated as "Demo Bathroom and wall to Closet", "Patch and paint walls and ceilings in entire house", "Remove kitchen window with AC unit" as well as other activities conducted or subcontracted by Respondent; and also includes a hand-written estimate of "350 sf" by Respondent as the approximate amount of painted surface disturbed.

44. The October 12, 2016 invoice of Respondent's subcontractor describes work conducted by Respondent's subcontractor as a demo of the bathroom involving 2.19 tons.

45. The work conducted or subcontracted by Respondent at 1602 Bainbridge Street in Philadelphia, Pennsylvania was a "renovation" as that term is defined by 40 C.F.R. § 745.83.

46. The residential property located at 1602 Bainbridge Street in Philadelphia, Pennsylvania was built prior to 1978.

47. At all times relevant to the violations alleged in this Complaint, the residential property located at 1602 Bainbridge Street in Philadelphia, Pennsylvania was not "housing for the elderly" as that term is defined by 40 C.F.R. § 745.103.

48. At all times relevant to the violations alleged in this Complaint, the residential property located at 1602 Bainbridge Street in Philadelphia, Pennsylvania was not housing for persons with disabilities.

49. At all times relevant to the violations alleged in this Complaint, the residential property located at 1602 Bainbridge Street in Philadelphia, Pennsylvania was not a “0-bedroom dwelling” as that term is defined by 40 C.F.R. § 745.103.

50. At all times relevant to the violations alleged in this Complaint, the residential property located at 1602 Bainbridge Street in Philadelphia, Pennsylvania was “target housing” as that term is defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

51. The work conducted or subcontracted by Respondent at 1602 Bainbridge Street in Philadelphia, Pennsylvania was a ‘renovation performed for compensation at target housing’ as described in 40 C.F.R. § 745.82.

52. At the time of the violations alleged in this Complaint, the painted components affected by the renovation performed at 1602 Bainbridge Street in Philadelphia, Pennsylvania were not determined to be free of lead-based paint by any of the methods described in 40 C.F.R. § 745.82(a).

53. The renovation performed at 1602 Bainbridge Street in Philadelphia, Pennsylvania was not an emergency renovation as described by 40 C.F.R. § 745.82(b).

2023-25 Rittenhouse Square, Philadelphia, Pennsylvania

54. The information collected in connection with the work conducted at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania included an agreement dated June 18, 2015 entered into by Respondent and the owner of the property, a Building Permit dated June 18, 2015 issued by the

City of Philadelphia Department of Licenses and Inspections, and a subcontract dated July 15, 2015 entered into by Respondent and Respondent's subcontractor.

55. The June 18, 2015 agreement includes a specified contract sum due to Respondent for work to be conducted or subcontracted by Respondent described generally as the "Carriage House Renovation Project."

56. The June 18, 2015 Building Permit issued by the City of Philadelphia Department of Licenses and Inspections describes the authorized work, in part, as:

FOR THE PARTIAL DEMOLITION OF THE EXISTING STRUCTURE TO REMOVE EXISTING ROOF AND FLOOR. FOR THE ADDITION OF 2ND-4TH FLOORS WITH ROOF DECKS ON THE 4TH FLOOR AND FOR THE CREATION OF A BASEMENT. STRUCTURE FOR USED [sic] AS MULTI-FAMILY HOUSEHOLD LIVING (SIX(6) FAMILIES).

57. The July 15, 2015 subcontract describes work to be conducted by Respondent's subcontractor as including removing interior walls (Approx. 143 SF (1st Floor), 88 SF (2nd Floor)), masonry walls, existing stairs, door & frame; saw cutting exterior for new openings; as well as other activities.

58. The work conducted or subcontracted by Respondent at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania was a "renovation" as that term is defined by 40 C.F.R. § 745.83.

59. The residential property located at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania was built prior to 1978.

60. At all times relevant to the violations alleged in this Complaint, the residential property located at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania was not "housing for the elderly" as that term is defined by 40 C.F.R. § 745.103.

61. At all times relevant to the violations alleged in this Complaint, the residential property located at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania as not housing for persons

with disabilities.

62. At all times relevant to the violations alleged in this Complaint, the residential property located at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania was not a “0-bedroom dwelling” as that term is defined by 40 C.F.R. § 745.103.

63. At all times relevant to the violations alleged in this Complaint, the residential property located at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania was “target housing” as that term is defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17), and 40 C.F.R. § 745.103.

64. The work conducted or subcontracted by Respondent at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania was a ‘renovation performed for compensation at target housing’ as described in 40 C.F.R. § 745.82.

65. At the time of the violations alleged in this Complaint, the painted components affected by the renovation performed at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania were not determined to be free of lead-based paint by any of the methods described in 40 C.F.R. § 745.82(a).

66. The renovation performed at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania was not an emergency renovation as described by 40 C.F.R. § 745.82(b).

IV. VIOLATIONS

Count 1 – Failure to Obtain Initial Firm Certification

67. The allegations contained in paragraphs 1 through 66 of this Complaint are incorporated by reference herein as though fully set forth at length.

68. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), firms are required to obtain initial certification from EPA under § 745.89 prior to performing or offering or claiming to perform renovations at target housing unless excepted.

69. Respondent was not EPA certified under § 745.89 prior to dates the renovations at 822 S. 5th Street in Philadelphia, Pennsylvania in 2016; 815 N. Woodbine Ave in Narberth, Pennsylvania in 2016; 1602 Bainbridge Street in Philadelphia, Pennsylvania in 2016; or 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania in 2015 were performed and was not excepted.

70. Respondent's acts or omissions described in paragraph 69 constitute a violation of 40 C.F.R. § 745.81(a)(2)(ii) and of Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689.

Counts 2-5 – Failure to Document Compliance with Information Distribution Requirement

71. The allegations contained in paragraphs 1 through 70 of this Complaint are incorporated by reference herein as though fully set forth at length.

72. Pursuant to 40 C.F.R. § 745.84(a)(1), firms are required to provide EPA's *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers* pamphlet to owners of target housing, and obtain either a written acknowledgement of receipt from the owner or a certificate of mailing before beginning renovation activities.

73. Respondent failed to obtain either a written acknowledgement of receipt from the owner or a certificate of mailing of the lead hazard information pamphlet prior to the time renovation activities began at 822 S. 5th Street in Philadelphia, Pennsylvania in 2016.

74. Respondent failed to obtain either a written acknowledgement of receipt from the owner or a certificate of mailing of the lead hazard information pamphlet prior to the time renovation activities began at 815 N. Woodbine Ave in Narberth, Pennsylvania in 2016.

75. Respondent failed to obtain either a written acknowledgement of receipt from the owner or a certificate of mailing of the lead hazard information pamphlet prior to the time renovation activities began at 1602 Bainbridge Street in Philadelphia, Pennsylvania in 2016.

76. Respondent failed to obtain either a written acknowledgement of receipt from the owner or a certificate of mailing of the lead hazard information pamphlet prior to the time renovation activities began at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania in 2015.

77. Respondent's acts or omissions described in paragraphs 73 through 76 constitute four (4) violations of 40 C.F.R. § 745.84(a)(1) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

Counts 6-9—Failure to Retain Records Demonstrating Compliance with Work Practices

78. The allegations contained in paragraphs 1 through 77 of this Complaint are incorporated by reference herein as though fully set forth at length.

79. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations are required to retain and, if requested, make available to EPA all records necessary to demonstrate compliance with the Residential Property Renovation regulations promulgated at 40 C.F.R. Part 745, Subpart E, for a period of 3 years following completion of the renovation.

80. Section 40 C.F.R. §745.86(b) specifies the types of records required to be retained pursuant to 40 C.F.R. § 745.86(a) and includes, but is not limited to, records documenting compliance with the work practice standards of 40 C.F.R. § 745.85(a) and post renovation cleaning verification requirements of 40 C.F.R. § 745.85(b). *See* 40 C.F.R. § 745.86(b)(6).

81. Respondent failed to retain records documenting compliance with the Residential Property Renovation regulations promulgated at 40 C.F.R. Part 745, Subpart E, including records documenting compliance with the work practice standards of 40 C.F.R. § 745.85(a) or

post renovation cleaning verification requirements of 40 C.F.R. § 745.85(b) as required by 40 C.F.R. §745.86(b)(6) for the renovation performed at 822 S. 5th Street in Philadelphia, Pennsylvania in 2016.

82. Respondent failed to retain records documenting compliance with the Residential Property Renovation regulations promulgated at 40 C.F.R. Part 745, Subpart E, including records documenting compliance with the work practice standards of 40 C.F.R. § 745.85(a) or post renovation cleaning verification requirements of 40 C.F.R. § 745.85(b) as required by 40 C.F.R. §745.86(b)(6) for the renovation performed at 815 N. Woodbine Ave in Narberth, Pennsylvania in 2016.

83. Respondent failed to retain records documenting compliance with the Residential Property Renovation regulations promulgated at 40 C.F.R. Part 745, Subpart E, including records documenting compliance with the work practice standards of 40 C.F.R. § 745.85(a) or post renovation cleaning verification requirements of 40 C.F.R. § 745.85(b) as required by 40 C.F.R. §745.86(b)(6) for the renovation performed at 1602 Bainbridge Street in Philadelphia, Pennsylvania in 2016.

84. Respondent failed to retain records documenting compliance with the Residential Property Renovation regulations promulgated at 40 C.F.R. Part 745, Subpart E, including records documenting compliance with the work practice standards of 40 C.F.R. § 745.85(a) or post renovation cleaning verification requirements of 40 C.F.R. § 745.85(b) as required by 40 C.F.R. §745.86(b)(6) for the renovation performed at 2023-25 Rittenhouse Square in Philadelphia, Pennsylvania in 2015.

85. Respondent's acts or omissions described in paragraphs 81 through 84 constitute four violations of 40 C.F.R. § 745.86(a) and Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689.

V. PROPOSED CIVIL PENALTY

Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of Section 15 or 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, shall be liable to the United States for a civil penalty. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. § 745.87(d) authorize the assessment of a civil penalty of up to \$25,000 per day per violation of the RRP Rule. This amount has been adjusted pursuant to the Federal Civil Penalties Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Inflation Adjustment Act Improvement Act of 2015 by implementing Civil Monetary Penalty Inflation Adjustment Rules codified at 40 C.F.R. Part 19 such that violations of RCRA Section 9006(d)(2), 42 U.S.C. § 6991e(d)(2), that occur on or before November 2, 2015 are subject to a civil penalty not to exceed \$37,500 per day per violation, and violations that occur after November 2, 2015 are subject to a civil penalty not to exceed \$39,873 per day per violation. *See* 78 Fed. Reg. 66643, 66648 (November 6, 2013) and 84 Fed. Reg. 2056, 2058 (February 6, 2019).

For purposes of determining the amount of any civil penalty to be assessed, Section 16 of TSCA, 15 U.S.C. § 2615, requires EPA to take into account the nature, circumstances, extent, and gravity of the violation or violations alleged and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require ("statutory factors"). In developing the proposed penalty, Complainant has taken into account the particular facts and circumstances

of this case with specific reference to the statutory factors set forth in Section 16 of TSCA, 15 U.S.C. § 2615; EPA’s August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation and Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (“ERP”), revised April 2013; EPA’s January 11, 2018 *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* (“2018 Inflation Adjustment Policy”), and EPA’s December 6, 2013 *Amendments to the U.S. Environmental Protection Agency’s Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)* (“2013 Inflation Adjustment Policy”). Copies of the ERP, 2018 Inflation Adjustment Policy, and 2013 Inflation Adjustment Policy are enclosed with this Complaint.

The ERP represents an analysis of the statutory factors listed above, as well as guidance on their application to particular cases. The ERP also provides a rational, consistent, and equitable calculation methodology for applying these factors to particular cases. Calculated pursuant to the ERP and adjusted appropriately for inflation pursuant to the 2018 Inflation Adjustment Policy and 2013 Inflation Adjustment Policy, EPA proposes to assess a civil penalty of twenty-seven thousand eight hundred and seventy-nine dollars (\$27,879) against the Respondent for the nine (9) violations alleged herein as illustrated below:

Count 1: Regulatory Requirement: 745.81(a)(2)(ii)	
<i>Extent Level: Minor</i>	
(ERP, Appendix A, page A-3, fn 49 (i.e., <4 employees))	
<i>Circumstance Level: 3a</i>	
(ERP, Appendix A, page A-3)	
<i>(Unadjusted)Proposed Penalty</i> (ERP, Appendix B, page B-2):	\$4,500
<i>Post 11/2/2015 Inflation Multiplier</i> (2018 Inflation Adjustment Policy, Table A, page 13)	1.03711
<i>Inflation Adjusted proposed penalty:</i>	\$4,667

Counts 2-5: Regulatory Requirement: 745.84(a)(1)*Extent Level: Significant*

(ERP, page 17 (i.e., age of the youngest individual is not known))

Circumstance Level: 4b

(ERP, Appendix A, page A-2)

(Unadjusted) Proposed Penalty (ERP, Appendix B, page B-2): \$3,540*Post 11/2/2015 Inflation Multiplier* (2018 Inflation Adjustment Policy, Table A, page 13) 1.03711*Inflation Adjusted proposed penalty:*

822 S. 5th Street, Philadelphia, Pennsylvania \$3,671

815 N. Woodbine Ave, Narberth, Pennsylvania \$3,671

1602 Bainbridge Street, Philadelphia, Pennsylvania \$3,671

On or before 11/2/2015 Inflation Multiplier (2013 Inflation Adjustment Policy, page 6) 1.0487*Inflation Adjusted proposed penalty:*

2023-25 Rittenhouse Square, Philadelphia, Pennsylvania \$3,712

Counts 6 - 9: Regulatory Requirement: 745.86(a)*Extent Level: Significant*

(ERP, page 17 (i.e., age of the youngest individual is not known))

Circumstance Level: 6a

(ERP, Appendix A, page A-3)

(Unadjusted) Proposed Penalty (ERP, Appendix B, page B-2): \$2,040*Post 11/2/2015 Inflation Multiplier* (2018 Inflation Adjustment Policy, Table A, page 13) 1.03711*Inflation Adjusted proposed penalty:*

822 S. 5th Street, Philadelphia, Pennsylvania \$2,116

815 N. Woodbine Ave, Narberth, Pennsylvania \$2,116

1602 Bainbridge Street, Philadelphia, Pennsylvania \$2,116

On or before 11/2/2015 Inflation Multiplier (2013 Inflation Adjustment Policy, page 6) 1.0487*Inflation Adjusted proposed penalty:*

2023-25 Rittenhouse Square, Philadelphia, Pennsylvania \$2,139

TOTAL PROPOSED PENALTY \$27,879

EPA's proposed penalty is not a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. EPA will consider, among other factors, Respondent's ability to pay to adjust 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 their businesses and the economic impact of the proposed penalty on their businesses. 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 this Complaint.

EPA's penalty policies represent an analysis of the statutory penalty factors enumerated above, as well as guidance on their application to particular cases. If the penalty proposed herein is contested through the hearing process described below, Complainant is prepared to support the statutory basis for the elements of the penalty policy applied in this case as well as the amount and nature of the penalty proposed. If appropriate, penalty adjustments may be made during settlement negotiations. EPA reserves the right to seek higher penalties if new evidence supports such assessment.

VI. NOTICE AND OPPORTUNITY TO REQUEST A HEARING

Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint or the appropriateness of the proposed penalty. To request a hearing, Respondent must file a written Answer to the Complaint, within thirty (30) days of receipt of this Complaint, with:

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

The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. Where Respondent has no knowledge of the facts contained in an allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which the Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. The failure of Respondent

to admit, deny or explain any material factual allegation contained in this Complaint constitutes an admission of such allegation.

Failure to file a written Answer may result in the filing of a Motion for a Default Order. Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and waives Respondent's right to contest such factual allegations. Issuance of a Default Order may result in the imposition of the penalties proposed herein without further proceedings.

Any hearing requested by Respondent will be held at a location to be determined at a later date pursuant to the Consolidated Rules of Practice at 40 C.F.R. § 22.21(d). The hearing will be conducted in accordance with the provisions of the Consolidated Rules of Practice.

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

Jennifer M. Abramson (3RC30)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

VII. SETTLEMENT CONFERENCE

Complainant encourages settlement of this proceeding at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of TSCA. Whether or not a hearing is requested, Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint, and the amount of the proposed civil penalty. **However, a request for a settlement conference does not relieve Respondent of its responsibility to file a timely Answer to the Complaint.**

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order

signed by the Regional Administrator or his designee. The filing of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint and to appeal the Final Order accompanying the Consent Agreement.

If Respondent wishes to arrange a settlement conference, Respondent or Respondent's legal counsel should contact Ms. Abramson at (215) 814-2066 prior to the expiration of the thirty (30) day period following the receipt of this Complaint. Once again, however, such a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.

VIII. QUICK RESOLUTION

In accordance with 40 C.F.R. § 22.18(a) of the Consolidated Rules of Practice, Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint. If Respondent pays the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1) of the Consolidated Rules of Practice, no Answer need be filed.

If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer but need additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2) of the Consolidated Rules of Practice, Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and a copy shall be provided to Jennifer M. Abramson (3RC30), Senior Assistant Regional Counsel,

U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within sixty (60) days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17 of the Consolidated Rules of Practice.

Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3) of the Consolidated Rules of Practice, the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

Payment of the penalty shall be made sending a certified or cashier's check made payable to the "United States Treasury," as follows:

- a. by Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO, 63197-9000.
Contact: Craig Steffen 513-487-2091
Molly Williams 513-487-2076

- b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

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

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- d. By electronic funds transfer (“EFT”) to the following account:

Federal Reserve Bank of New York
ABA 021030004
Account No. 68010727
SWIFT Address FRNYUS33
33 Liberty Street
NY, NY 10045

(Field tag 4200 of Fedwire message should read “D 68010727
Environmental Protection Agency”)

- e. By automatic clearinghouse (“ACH”) to the following account:

U.S. Treasury REX/Cashlink ACH Receiver
ABA 051036706
Account No. 310006
Environmental Protection Agency
CTX Format
Transaction Code 22 – checking
Contact: John Schmid
202-874-7026

- f. Online payments can be made at WWW.PAY.GOV by entering “sfo 1.1” in the search field, and opening the form and completing the required fields.

- g. Additional payment guidance is available at:
<http://www2.epa.gov/financial/makepayment>

Each payment shall also reference the above case caption and docket number (Docket No.: TSCA-03-2019-0058). At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to the following addressees:

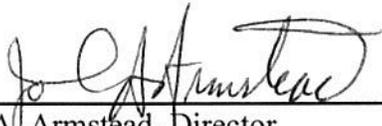
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Jennifer M. Abramson Senior Asst. Regional Counsel (3RC30)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

IX. SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS

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

3.28.19
Date



John A. Armstead, Director
Land and Chemicals Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

IN RE:	)	DOCKET NO. TSCA-03-2019-0058
)	
Bottos Construction, Inc.	)	ADMINISTRATIVE COMPLAINT
1005 Sussex Boulevard	)	AND NOTICE OF OPPORTUNITY
Broomall, PA 19008	)	FOR HEARING
)	
Respondent,	)	Proceeding Under Section 16(a) of
	)	the Toxic Substances Control Act
822 S. 5th Street, Philadelphia, PA	)	15 U.S.C. § 2615(a).
815 N. Woodbine Ave, Narberth, PA)	
1602 Bainbridge Street, Philadelphia, PA)	
2023-25 Rittenhouse Square, Philadelphia, PA)	
)	
Target Housing.)	

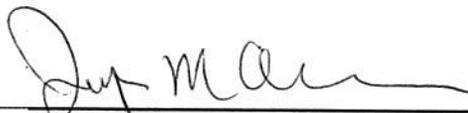
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the above captioned United States Environmental Protection Agency's Administrative Complaint and Notice of Opportunity for Hearing, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that a true and correct copy of the Administrative Complaint and Notice of Opportunity for Hearing, was sent by Certified Mail Return Receipt Requested, to the following:

Constantinos Bottos, President
Bottos Construction, Inc.
1005 Sussex Boulevard
Broomall, PA 19008

Robert S. Clewell
Clewell Law Firm
1617 JFK Blvd.
Philadelphia, PA 19103

3/28/2019
Date



Jennifer M. Abramson
Senior Assistant Regional Counsel

