



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

September 25, 2018

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (ORC04-6)
5 Post Office Square
Boston, Massachusetts 02109



Re: V & G Home Improvements, Inc.
Docket No. TSCA-01-2018-0060

Dear Ms. Santiago:

I have enclosed for filing in the above-referenced matter the original and one copy of the Complaint and Notice of Opportunity for Hearing.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink that reads "Eve Vaudo".

Eve Vaudo
Senior Enforcement Counsel

cc: Girard Boucher

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

SEP 25 2018

EPA ORC
Office of Regional Hearing Cler

In the Matter of:)
)
V & G Home Improvements, Inc.)
)
166 Plains Road)
Leeds, Maine 04263)
)
Respondent.)
)
Proceeding under Section 16(a) of the)
Toxic Substances Control Act,)
15 U.S.C. § 2615(a))
)

Docket No.

TSCA-01-2018-0060

COMPLAINT AND
NOTICE OF
OPPORTUNITY FOR
HEARING

COMPLAINT

I. STATUTORY AND REGULATORY BACKGROUND

1. This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Complainant is the Legal Enforcement Manager of the Office of Environmental Stewardship, U.S. Environmental Protection Agency (“EPA” or “Complainant”), Region 1. Respondent, V & G Home Improvements, Inc. (“Respondent”), is hereby notified of Complainant’s determination that Respondent has violated Sections 15 and 409 of TSCA, 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, entitled “Residential Property Renovation,” as set forth at 40 C.F.R. Part 745, Subpart E.

Complainant seeks civil penalties pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides that violations of Section 409 of TSCA are subject to the assessment by Complainant of civil and/or criminal penalties.

2. In 1992, Congress passed the Act in response to findings that low-level lead poisoning is widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint, and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. One of the stated purposes of the Act is to ensure that the existence of lead-based paint hazards is taken into account during the renovation of homes and apartments. To carry out this purpose, the Act added a new title to TSCA entitled “Title IV-Lead Exposure Reduction,” which currently includes Sections 401-411 of TSCA, 15 U.S.C. §§ 2681-2692.

3. In 1996, EPA promulgated regulations to implement Section 402(a) of TSCA, 15 U.S.C. § 2682(a). These regulations are set forth at 40 C.F.R. Part 745, Subpart L. In 1998, EPA promulgated regulations to implement Section 406(b) of the Act. These regulations are set forth at 40 C.F.R. Part 745, Subpart E. In 2008, EPA promulgated regulations to implement Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3) by amending 40 C.F.R. Part 745, Subparts E and L (the “Renovation, Repair and Painting Rule” or the “RRP Rule” and the “Lead-Based Paint Activities Rule,” respectively).

4. Pursuant to 40 C.F.R. § 745.82, the regulations in 40 C.F.R. Part 745, Subpart E apply to all renovations performed for compensation in “target housing.” As provided in 40 C.F.R. § 745.83, “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,” and includes the renovation of a building for the purpose of converting a building or portion of a building into target housing.

Pursuant to Section 401 of TSCA, 15 U.S.C. § 2681(17), “target housing” is defined as “any housing constructed prior to 1978, except housing for the elderly or disabled (unless any child who is less than six years old resides or is expected to reside in such housing), or any 0-bedroom dwelling.”

5. The RRP Rule sets forth procedures and requirements for, among other things, the accreditation of training programs, the certification of renovation firms and individual renovators, the work practice standards for renovation, repair and painting activities in target housing and child-occupied facilities, and the establishment and maintenance of records.

6. Pursuant to Section 409 of TSCA, it is unlawful for any person to fail to comply with any rule issued under Subchapter IV of TSCA (such as the RRP Rule). Pursuant to 40 C.F.R. § 745.87(a), the failure to comply with a requirement of the RRP Rule is a violation of Section 409 of TSCA.

7. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of Section 409 of TSCA shall be liable to the United States for a civil penalty.

8. 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 \$25,000 per violation per day of the RRP Rule. Under the Debt Collection Improvement Act, 40 C.F.R. Part 19, and the Civil Monetary Penalty Inflation Adjustment Improvements Act of 2015, 28 U.S.C. § 2461

note, Pub. L. 114-74, for violations that occurred after November 2, 2015 where penalties are assessed on or after January 15, 2018, the maximum penalty has been raised to \$38,892.

II. GENERAL ALLEGATIONS

9. Respondent is a Maine corporation with a business address of 166 Plains Road, Leeds, Maine. Respondent operates a residential construction and remodeling business, with annual sales of \$310,000.

10. Respondent is a service provider for Lowe's Home Centers, LLC. Respondent offers construction and remodeling services through Lowe's which offers installation services through prescreened contractors.

11. In 2016, Respondent entered into three installation contracts through Lowes Store #2514 to provide remodeling services at the following three houses:

- a. 19 Noble Street, Lewiston, Maine, which was constructed in 1951;
- b. 72 Stevens Street, Lewiston, Maine, which was constructed in 1924; and
- c. 1251 Canton Point Road, Dixfield, Maine, which was built in 1962.

12. At all times relevant to this Complaint, these three houses were "target housing," as defined in 40 C.F.R. § 745.83. Furthermore, none of the three houses satisfies the requirements for an exemption to the provisions of TSCA or the RRP Rule.

13. On June 29, 2016, EPA representatives met with Mr. Girard Boucher, the owner and President of Respondent, and his staff, to conduct an inspection at Respondent's office ("EPA Inspection") located in Leeds, Maine to determine

Respondent's compliance with the recordkeeping requirements of the RRP Rule. Mr. Boucher provided the EPA representatives with a list of fifteen jobs conducted in houses built before 1978. EPA representatives selected five projects randomly for a detailed review for purposes of determining compliance.

14. During the EPA Inspection, Respondent was unable to provide the EPA inspector with the following written documentation:

- a. Documentation that a certified renovator was assigned to each of the three projects;
- b. Documentation demonstrating that a certified renovator made a determination that lead-based paint was not present on the components affected by the renovation activities at two of the projects, including identification of the manufacturer and model of any test kits used, a description of the components that were tested including their locations, and the result of each test kit used; and
- c. Documentation that a certified renovator performed post-renovation cleaning verification at the three projects.

15. At all times relevant to the allegations set forth in this Complaint, Respondent's renovation activities at each of the three properties listed above constituted a "renovation," as defined in 40 C.F.R. § 745.83.

16. At all times relevant to the allegations set forth in this Complaint, each of the renovation activities performed by Respondent constituted a "renovation for compensation" subject to the RRP Rule. See 40 C.F.R. § 745.82. Furthermore, the renovation activities at all three properties did not satisfy the requirements for an exemption to the provisions of TSCA or the RRP Rule.

17. At all times relevant to the allegations set forth in this Complaint, Respondent was a “renovator” as defined in 40 C.F.R. § 745.83.

18. At all times relevant to the allegations set forth in this Complaint, Respondent was a “firm,” as defined in 40 C.F.R. § 745.83.

19. Based on the above-described inspection, Complainant has identified the following violations of Section 409 of TSCA, the Residential Lead-Based Paint Hazard Reduction Act of 1992, and the RRP Rule, as set forth at 40 C.F.R. Part 745, Subpart E.

III. VIOLATIONS

Count 1 – Failure to Maintain Records Demonstrating Compliance

20. Complainant incorporates by reference paragraphs 1 through 19.

21. Pursuant to 40 C.F.R. § 745.86(a), firms that perform renovations for compensation in target housing must maintain all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E, for a period of three years following completion of the renovation. The records that must be retained are set forth in 40 C.F.R. § 745.86(b), and include records that a determination was made that lead-based paint was not present on the components affected by the renovation, including records related to the use of test kits, and records documenting compliance with the work place standards, including records documenting that a certified renovator was assigned to the project and that that the certified renovator performed the post-renovation cleaning verification.

22. The house at 19 Noble Street in Lewiston, Maine is target housing because it was built in 1951. The renovation activities performed by Respondent at this address, including renovation of a kitchen, occurred after February 27, 2016. At the time of the renovation, the house was occupied by children.

23. Respondent did not maintain documentation of post-renovation cleaning verification of the 19 Noble Street project, in violation of 40 C.F.R. § 745.86(a) and (b)(6).

24. The house at 72 Stevens Street in Lewiston, Maine is target housing because it was built in 1924. The renovation activities performed by Respondent at this address, including relocation of a doorway, occurred after May 14, 2016.

25. Respondent did not maintain documentation certifying that a determination had been made at the 72 Stevens Street project that lead-based paint was not present on the components affected by the renovation, including records related to the use of test kits. This failure to maintain records constitutes a violation of 40 C.F.R. § 745.86(a) and (b)(1).

26. Respondent also did not maintain documentation of post renovation cleaning verification of the 72 Stevens Street project, in violation of 40 C.F.R. § 745.86(a) and (b)(6).

27. The house at 1251 Canton Point Road in Dixfield, Maine is target housing because it was built in 1962. The renovation activities performed by Respondent at this address, including demolition work and renovation of a kitchen, occurred after April 12, 2016.

28. Respondent did not maintain documentation certifying that a determination had been made at the 1251 Canton Point Road project that lead-based paint was not present on the components affected by the renovation, including records related to the use of test kits. This failure to maintain records constitutes a violation of 40 C.F.R. § 745.86(a) and (b)(1).

29. Respondent also did not maintain documentation of post renovation cleaning verification of the 1251 Canton Point Road project, in violation of 40 C.F.R. § 745.86(a) and (b)(6).

30. The above-listed violations alleged in this count are prohibited acts under TSCA Section 409 and 40 C.F.R. § 745.87(a), and violations for which penalties may be assessed pursuant to Section 16 of TSCA.

IV. PROPOSED PENALTY

31. In determining the amount of any penalty to be assessed, Section 16 of TSCA requires Complainant to consider the nature, circumstances, extent and gravity of the violations and, with respect to Respondent, its ability to pay, the effect of the proposed penalty on the ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

32. To assess a penalty for the alleged violations in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to 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"), a copy of which is enclosed with this Complaint. The LBP Consolidated ERPP provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases. Complainant proposes that Respondent be assessed a civil penalty in the amount of **three thousand, three hundred and sixty dollars (\$3,360)** for the TSCA violations

alleged in this Complaint. (See Attachment A to this Complaint explaining the reasoning for this penalty.)

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

33. As provided by Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and in accordance with 40 C.F.R. § 22.14, Respondent has a right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. Any request for a hearing must be included in Respondent's written Answer to this Complaint ("Answer") and filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.

34. The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. The failure of Respondent to deny an allegation contained in the Complaint constitutes an admission of that allegation. The Answer must also state the circumstances or arguments alleged to constitute the grounds of any defense; the facts that Respondent disputes; the basis for opposing any proposed penalty; and whether a hearing is requested. See 40 C.F.R. § 22.15 of the Consolidated Rules of Practice for the required contents of an Answer.

35. Respondent shall send the original and one copy of the Answer, as well as a copy of all other documents that Respondent files in this action, to the Regional Hearing Clerk at the following address:

Wanda A. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: ORC04-6
Boston, Massachusetts 02109-3912

36. Respondent shall also serve a copy of the Answer, as well as a copy of all other documents that Respondent files in this action, to Eve Vaudo, the attorney assigned to represent Complainant in this matter, and the person who is designated to receive service in this matter under 40 C.F.R. § 22.5(c)(4), at the following address:

Eve Vaudo
Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square – Suite 100
Mail Code: OES04-4
Boston, Massachusetts 02109-3912

37. If Respondent fails to file a timely Answer to the Complaint, Respondent may be found to be in default, pursuant to 40 C.F.R. § 22.17 of the Consolidated Rules of Practice. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations under Section 16(a)(2)(A) of TSCA. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in the default order shall become due and payable by Respondent, without further proceedings, thirty (30) days after the default order becomes final.

38. The filing of service of documents other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by email, consistent with the "Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the

Region 1 Regional Judicial Officer,” a copy of which has been provided with the Complaint.

VI. SETTLEMENT CONFERENCE

39. Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with Complainant or his designee concerning the violations alleged in this Complaint. Such conference provides Respondent with an opportunity to respond informally to the allegations, and to provide whatever additional information may be relevant to the disposition of this matter. To explore the possibility of settlement, Respondent or Respondent’s counsel should contact Eve Vaudo, Senior Enforcement Counsel, at the address cited above or by calling (617) 918-1089. Attorney Vaudo has been designated to receive service in this action. Please note that a request for an informal settlement conference by Respondent does not automatically extend the 30-day time period within which a written Answer must be submitted in order to avoid becoming subject to default.

VII. QUICK RESOLUTION

40. Under Section 22.18(a) of the Consolidated Rules of Practice, Respondent has the option of resolving this matter at any time by paying the penalty proposed in the Complaint in full.

41. Payment of the penalty must be made by submitting a bank, cashier’s or certified check payable to the Treasurer, United States of America, to:

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

42. Copies of the check must also be mailed to the Regional Hearing Clerk and Eve Vaudo at the addresses above. The penalty payment check must reference the title of this proceeding (“In the Matter of: V & G Home Improvements, Inc.”) and its Docket Number (TSCA-01-2018-0060).

43. If Respondent pays the proposed penalty in full within thirty (30) days after receiving this complaint, then Respondent need not file an Answer to the Complaint. If Respondent wishes to resolve this matter without having to file an Answer but needs additional time in which to do so, Respondent may file a written statement with the Regional Hearing Clerk at the address above within thirty (30) days of receiving the Complaint. The written statement must specify that Respondent agrees to pay the penalty within sixty (60) days of receipt of the Complaint. Failure to make such payment within sixty (60) days may subject Respondent to a default action.



Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region 1

September 25, 2018
Date

ATTACHMENT A

In the Matter of V & G Home Improvements, Inc.

Docket Number: TSCA-01-2018-0060

PROPOSED PENALTY SUMMARY

The following provides the justification for the proposed penalty calculation in the administrative penalty action against V & G Home Improvements, Inc. (“V & G Home Improvements” or “Respondent”), which seeks to assess a civil penalty in the amount of **\$3,360** for alleged violations of the Renovation, Repair and Painting (“RRP”) Rule. The penalty was calculated according to EPA’s August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (“LBP Consolidated ERPP”).

1. RENOVATION, REPAIR AND PAINTING RULE VIOLATIONS

COUNT I.

Recordkeeping Requirements: Failure to Maintain Records Demonstrating Compliance with the RRP Rule

Provision Violated: 40 C.F.R. § 745.86(a) and (b) require that all firms performing renovations for compensation must establish and maintain, and if requested, make available to EPA, all records necessary to demonstrate compliance with the RRP Rule, 40 C.F.R. §745 Subpart E, for a period of three years following completion of the renovation.

Circumstance Level: The failure to maintain all records necessary to demonstrate compliance following the completion of renovations results in a *lesser probability* of impacting human health and the environment due to exposure to lead-based paint, lead dust, and debris. As a result, under the LBP Consolidated ERPP Appendix A, a violation of 40 C.F.R. § 745.86(a) and (b) is a *Level 6a* violation.

Extent of Harm: The RRP Rule ERPP takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living in the target housing. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. The harmful effects that lead can have on children under the age of six warrants a *major* extent factor. Children between the ages of six and eighteen may be adversely affected by the presence of lead-based paint and lead-based paint hazards because of their vulnerability due to their physical development. The harmful effects that lead can have on children between the ages of six and eighteen warrant a *significant* extent factor. The documented absence of children or pregnant women warrants a *minor* extent factor. When the age of the youngest child is not

known, a significant extent factor is used. In this case, there were no children under eighteen living in two of the affected units at the time of the violations, and children under eighteen but of unknown age in one of the affected units, resulting in two minor violations and one significant violation.

Respondent failed to maintain records documenting (i) that a certified renovator was assigned to renovations at all three of the following target housing units; (ii) the results of a lead test kit at two of the following target housing units; and (iii) performance of post-renovation cleaning verification following a renovation at all three of the following target housing units, in violation of 40 C.F.R. § 745.86(a), (b)(1) and (b)(6)¹:

Respondent/ General Contractor	Work Site Address	Description of RRP Work	Date of Work	Children/ Ages	Circumstance/ Extent of Harm Levels	Gravity- Based Penalty
V & G Home Improvements, Inc.	19 Noble Street, Lewiston, ME	Renovation of a kitchen	February 27, 2016	Children present, ages unknown	6a/Significant	\$2,040
V & G Home Improvements, Inc.	72 Stevens Street, Lewiston, ME	Renovations, including relocation of a doorway	May 14, 2016	No children	6a/Minor	\$600
V & G Home Improvements, Inc.	1251 Canton Point Road, Dixfield, ME	Partial demolition and renovation of the kitchen	April 12, 2016	No children	6a/Minor	\$600

Sub-Total Count 1: \$3,240

Inflationary Adjustment²: \$120

Total: \$3,360

¹ The failure to maintain records is considered a one-time violation for each project. Therefore, EPA is proposing this penalty for each of the renovation jobs that are the subject of the complaint.

² EPA applied an inflation adjustment using a multiplier of 1.03711 in accordance with its guidance entitled 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.

CERTIFICATE OF SERVICE

I hereby certify that on the date noted below, the original and one copy of the Complaint and Notice of Opportunity for Hearing in the matter of V & G Home Improvements, Inc., Docket No. TSCA-01-2018-0060, were filed with the Regional Hearing Clerk and a copy was sent to Respondent, as set forth below:

Original and one copy
by hand delivery to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1, (ORC04-6)
5 Post Office Square, Suite 100
Boston, MA 02109

Copy by certified mail to:

Mr. Girard Boucher
V & G Home Improvements, Inc.
166 Plains Road
Leeds, Maine 04263

Date:

9/25/18

Eve Vaudo

Eve Vaudo
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1, Mail Code OES04-4
5 Post Office Square, Suite 100
Boston, MA 02109
(617) 918-1089
vaudo.eve@epa.gov