Exhibit I

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS

BEFORE THE ADMINISTRATOR

In the Matter of:	)	
	)	
THE ASKINS DEVELOPMENT GROUP, LLC	)	**Docket No.** TSCA-07-2019-0280
	)	
	)	
Respondent.	)	

DECLARATION OF CASSANDRA MANCE

I, Cassandra Mance, hereby declare that:

1. I am currently employed as an Environmental Scientist for the U.S. Environmental Protection Agency, Region 7 ("EPA Region 7") in the Tanks and Lead-Based Paint Section of the Tanks, Toxics and Pesticides Branch, of the Land, Chemical and Redevelopment Division. I have been employed in this capacity since approximately April of 2019.

2. Prior to my current employment described in paragraph 1, I was employed as an Environmental Scientist and Case Review Officer for EPA Region 7 in the Toxics and Pesticides Branch of the Water, Wetlands, and Pesticides Division. I was employed in this capacity from approximately October of 2009 until approximately April of 2019.

3. As an Environmental Scientist and Case Review Officer, my duties included, but were not limited to, the following:

    a. Apply knowledge of all federal lead-based paint regulations under the Toxic Substances Control Act (TSCA), including Sections 1018, 402(c), and 406(b), to review and analyze lead-based paint inspection reports, subpoena responses, information request letter responses, photographs, videos, and other pertinent information related to complex technical and regulatory issues in order to

determine regulated entities' compliance with federal lead-based paint regulatory requirements;

b. Use national and regional lead-based paint enforcement procedures, timelines, and policies, including the "Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule" ("ERPP") to develop formal penalty calculations and provided expert consultation to supporting attorneys;

c. Work collaboratively with Regional Counsel on formal lead-based paint case development, negotiation of penalty settlements with respondents having a varying understanding of the regulatory requirements and processes, and Alternative Dispute Resolution (ADR) orders;

d. Perform oversight, determine resource requirements, monitor progress, and coordinate with regulated entities, contractors, and state agencies to ensure entities' compliance with complex federal and state lead-based paint regulations and financial requirements when performing Supplemental Environmental Projects (SEPs) or Conditions as part of settlement agreements;

e. Determine a site's eligibility for an abatement SEP by reviewing lead inspection reports, lead risk assessment reports, and photographs for positive levels of lead-based paint;

f. Draft a variety of technical compliance documents, such as Notices of Noncompliance, Advisory Letters, and Letters of Compliance, which effectively communicate complex lead-based paint regulatory requirements;

g. Develop regional lead-based paint enforcement policies and guidance, along with lead-based paint team and Regional Counsel;

h. Provide technical assistance, respond to questions, and give recommendations on complex lead-based paint regulatory, policy, and enforcement issues to other EPA staff and management and local and state agencies;

i. Conduct presentations to state agencies on implementation of civil enforcement processes for TSCA lead-based paint cases;

j. Provide outreach and compliance assistance on complex environmental and regulatory issues related to lead-based paint to the general public and the regulated community;

k. Collaborate with lead-based paint team to develop compliance assistance/outreach communication plans on an annual basis; and

l. Train other Case Review Officers and Attorneys on how to interpret and apply the TSCA lead-based paint regulations, the case development process, and how to draft a variety of technical, regulatory, compliance documents.

4. During my approximately 10 years as a Case Review Officer, I personally reviewed evidence and investigative files for approximately 340 lead-based paint cases assigned to me and developed penalty calculations, pursuant to the ERPP, for over 150 of those cases. I have also reviewed and analyzed numerous other lead-based paint cases and penalty calculations while training or peer reviewing other case review officers.

5. My involvement in this matter began in March of 2016, after the EPA and City of St. Louis Lead Hazard Control Department ("City of St. Louis") investigated a neighbor complaint regarding Respondent's work site at 3429 Missouri Avenue in St. Louis, Missouri (the "Property").

6. I have reviewed the investigative case file for this matter, including, but not limited to the following, and am personally familiar with the facts set forth therein:

a. EPA's RRP Tip/Complaint Worksheet dated March 7, 2016;

b. The sworn statement of the complaining neighbor dated March 15, 2016;

c. Photographs from the complaining neighbor taken on March 3, 6, and 8, 2016;

d. Videos from the complaining neighbor taken on March 3, 5, 6, and 8, 2016;

e. The following voice messages provided by the complaining neighbor:

i. From the City of St. Louis Lead Inspector to the complaining neighbor dated March 4, 7, 9, 10, and 14, 2016; and

ii. From Orlando Askins to the complaining neighbor dated February 22, 2016 and March 2 and 9, 2016;

f. The following emails provided by the complaining neighbor:

i. Emails from the complaining neighbor to Orlando Askins dated March 2 and 3, 2016;

ii. Email from Orlando Askins to the complaining neighbor dated March 3, 2016;

g. Photographs of the Property taken by the City of St. Louis Lead Inspector on March 4, 7 and 9, 2019;

h. The results of soil sampling from the complaining neighbor's property conducted by the City of St. Louis on March 7, 2019;

i. Emails from the City of St. Louis to EPA personnel regarding the City of St. Louis investigation of the Property;

j. Photographs of the Property taken by an EPA inspector on March 15, 2016;

k. Memorandum dated March 25, 2016 from EPA inspector to EPA program personnel regarding the EPA inspector's visit to the Property on March 15, 2016 and other aspects of the investigation;

l. Property records related to the Property; and

m. Permit records related to the renovation of the Property.

7. As part of my responsibilities, and based upon my education, experience, training, and review of the investigative file, I determined Respondent committed the nine independently assessable violations alleged in the Complaint.

8. As part of my responsibilities, I then calculated the proposed penalty for each of the violations alleged in the Complaint, taking into account the statutory civil penalty criteria codified at Section 16(a)(2)(B) of the Toxic Substances Control Act, 15 U.S.C. § 2615, by using the ERPP, as revised in April 2013.

9. The ERPP provides a rational, consistent, and equitable methodology for applying the TSCA statutory civil penalty criteria to the specific facts and circumstances of this matter, following the framework described in the EPA's "Guidelines for Assessment of

Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy," published in September 1980.[1]

10. I calculated the penalty for each alleged violation based on facts and information available to me prior to the EPA's filing of the Complaint on September 30, 2019.

Gravity Based Penalty

11. Pursuant to the ERPP, I determined a gravity-based penalty for each alleged violation by utilizing the "Gravity-Based Penalty Matrix for PRE, RRP & LBP Activities Rules," included as Appendix B of the ERPP ("GBP Matrix"). The penalty matrix incorporates the following factors: (1) the *nature* of each alleged violation; (2) the *circumstances* of each alleged violation; and (3) the *extent* of harm to human health and the environment posed by each alleged violation. For each alleged violation, I determined the nature, circumstance,[2] and extent factors, which in turn determined the applicable gravity-based penalty. I then considered whether to adjust the gravity-based penalty upward or downward by considering the violator-specific statutory factors and what, if any, economic benefit accrued to Respondent.

12. The "nature" of violations under TSCA is defined as "the essential character of the violation, and incorporates the concept of whether the violation is of a 'chemical control,' 'control-associated data gathering,' or 'hazard assessment' nature."[3] The ERPP characterizes the requirements of the Renovation, Repair, and Painting Rule ("RRP

[1] *See* Exh. H, at p. 8.
[2] Appendix A of the ERPP assigns a "Circumstance Level" to each regulatory provision of the Renovation, Repair, and Painting Rule, specifying both the "circumstance" and "nature" factors of the specific violation. *See* Exh. H, at pp. A-1 through A-10.
[3] Exh. H, at p. 14.

Rule")[4] as "chemical control" in nature because "they are aimed at limiting exposure and risk presented by lead-based paint by controlling how lead-based paint is handled by renovators . . . ."[5] The requirements of the PRE Rule, by comparison, are characterized as "hazard assessment" in nature because they are "designed to provide owners and occupants of target housing . . . with information that will allow them to weigh and assess the risks presented by renovations and to take proper precautions to avoid unnecessary exposure . . . that may be created during a renovation or abatement activity."[6] The ERPP explains that the "'nature' of the violation will have a direct effect on the measure used to determine the appropriate 'circumstance' and 'extent' categories [that] are selected on the GBP Matrix in Appendix B."[7]

13. The "circumstance" of the violation assesses "the probability of harm resulting from a particular violation," categorized by the ERPP as either "High," "Medium," or "Low."[8] For a violation of the PRE Rule, "the primary circumstance to be considered is the occupant's ability to assess and weigh . . . the factors associated with the risk to their health from the planned renovation, so they can take proper precautions to avoid any lead hazards."[9] For a violation of the workplace standards of the RRP Rule, "the primary circumstance to be considered is whether the specific violation has a high, medium, or low probability of impacting human health."[10]

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[4] The ERPP explains that the RRP Rule contains the regulations found at 40 C.F.R. Part 745, Subparts E, L, and Q. *Id.* at p. 1, FN 2. All of the alleged violations at issue in this case are of 40 C.F.R. Part 75, Subpart E, and therefore alleged violations of the RRP Rule.
[5] *Id.* at p. 14.
[6] *Id.*
[7] *Id.* at pp. 14-15.
[8] *Id.* at p. 16.
[9] *Id.* at p. 15.
[10] *Id.*

14. The "extent" of the violation represents the degree, range, or scope of a violation's potential for harm, which is characterized as either "Major," "Significant," or "Minor."[11] The ERPP explains that "the measure of the 'extent' of harm focuses on the overall intent of the rules and the amount of harm the rules are designed to prevent," based upon three determinable facts: (1) the age of any children who occupy target housing; (2) whether a pregnant woman occupies target housing; and (3) whether a child or children under six years of age had access to the child-occupied facility during renovations/abatements.[12] "Where . . . no individuals younger than eighteen were residing in the target housing at the time of the violation," the ERPP provides that the "Minor" extent category should be applied to the violation.[13]

15. I have attached to this declaration a penalty calculation worksheet that summarizes the civil penalty determinations described as follows:

Count 1

16. Count 1 of the Complaint alleges that Respondent violated 40 C.F.R. § 745.81(a)(2)(ii) by failing to apply to the EPA for certification pursuant to 40 C.F.R. § 745.89(a)(1) prior to performance of a renovation for compensation on target housing. Prior to filing the Complaint, I confirmed that EPA had no record of Respondent applying for or obtaining certification from EPA pursuant to 40 C.F.R. § 745.89(a)(1) prior to performance of the renovation of the Property.

17. Because these regulatory requirements are found in 40 C.F.R. Part 745, Subpart E, they are "chemical control" in nature, violation of which poses a medium probability of

[11] *Id.* at p. 16.
[12] *Id.* at pp. 16-17.
[13] *Id.* at p. 17.

impacting human health and the environment. Appendix A of the ERPP assigns this alleged violation a Circumstance Level of 3a.[14]

18. Because no individuals younger than 18 resided in the Property at the time of the renovation, I used a minor extent factor for this alleged violation.

19. Consistent with the GBP Matrix applicable to violations that occurred after January 12, 2009, included as Appendix B of the ERPP, I determined that the gravity-based penalty for this Circumstance Level 3a violation with a minor extent is $4,500.

Count 2

20. Count 2 of the Complaint alleges that Respondent violated 40 C.F.R. § 745.89(d)(3) on February 29, 2016, by failing to ensure all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Count 2 of the Complaint alleges that Respondent violated 40 C.F.R. § 745.85(a)(2)(i)(C), and therefore 40 C.F.R. § 745.89(d)(3), in that "[t]he EPA investigation revealed that Respondent failed to close windows in the work area on February 29, 2016. Specifically, statements obtained from a neighbor demonstrate open windows in the work area." Count 2 further alleges that Respondent violated 40 C.F.R. § 745.85(a)(4)(i), and therefore 40 C.F.R. § 745.89(d)(3), in that:

> [t]he EPA investigation revealed that Respondent, on February 29, 2016, failed to contain waste from renovation activities to prevent releases of dust and debris before waste was removed from the work area for storage or disposal. Specifically, statements obtained from a neighbor demonstrate releases of dust and debris from Respondent's renovation activities which migrated to an adjacent property, where a child or children resided.

21. Because these regulatory requirements are found in 40 C.F.R. Part 745, Subpart E, they are "chemical control" in nature, violation of which poses a medium probability of

[14] *Id.* at p. A-3 (Section VII).

impacting human health and the environment. In accordance with the ERPP, EPA assigns this alleged violation a Circumstance Level of 3a.[15]

22. Because no individuals younger than 18 resided in the Property at the time of the renovation, I used a minor extent factor for this alleged violation.

23. Consistent with the applicable GBP, I determined that the gravity-based penalty for this Circumstance Level 3a violation with a minor extent is $4,500.

Count 3

24. Count 3 of the Complaint alleges that Respondent violated 40 C.F.R. § 745.89(d)(3) on March 3, 2016, by failing to ensure all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Count 3 of the Complaint alleges that Respondent violated 40 C.F.R. § 745.85(a)(2)(i)(C), and therefore 40 C.F.R. § 745.89(d)(3), in that "[t]he EPA investigation revealed that Respondent failed to close windows in the work area on March 3, 2016. Specifically, photographs taken by the City of St. Louis lead inspector on March 3, 2016 depict open windows in

[15] Appendix A of the ERPP does not specifically assign a circumstance level for violations of 40 C.F.R. § 745.89(d)(3). However, Appendix A of the ERPP does assign a circumstance level of 3a for the failure of a firm to carry out its responsibilities during a renovation, under 40 C.F.R. § 745.89(d)(1) pursuant to 40 C.F.R. § 745.81(a)(2). Exh. H, at p. A-3 (Section VII). Likewise, Appendix A of the ERPP assigns a circumstance level of 3a for the failure of a firm to carry out its responsibilities during a renovation, under 40 C.F.R. § 745.89(d)(2) pursuant to 40 C.F.R. § 745.81(a)(2). *Id*. To that end, the EPA's Office of Enforcement and Compliance Assurance, Office of Civil Enforcement has instructed RRP practitioners that violations of 40 C.F.R. § 745.89(d)(3), like violations of 40 C.F.R. §§ 745.89(d)(1) and (2), should be assigned a circumstance level of 3a. In this case, the assignment of a circumstance level of 3a to violations of 40 C.F.R. § 745.89(d)(3) is to Respondent's benefit. For Counts 2-9, the case team could have simply alleged work practice violations of 40 C.F.R. § 745.85, which carry a higher circumstance of 2a (Exh. H, at pp. A-5-A-6), and therefore higher penalties under the ERPP (Exh. H, at p. B-2). For example, Appendix B of the ERPP assigns a level 3a violation, with a minor extent, a penalty of $4,500 before inflation. In contrast, Appendix B of the ERPP assigns a level 2a violation, with a minor extent, a penalty of $6,000 before inflation.

the work area."[16] Count 3 further alleges that Respondent violated 40 C.F.R. § 745.85(a)(4)(i), and therefore 40 C.F.R. § 745.89(d)(3), in that:

> [t]he EPA investigation revealed that Respondent, on March 3, 2016, failed to contain waste from renovation activities to prevent releases of dust and debris before waste was removed from the work area for storage or disposal. Specifically, the videos taken by a neighbor on March 3, 2016, depict releases of dust and debris from Respondent's renovation activities which migrated to an adjacent property, where a child or children resided.

25. Because these regulatory requirements are found in 40 C.F.R. Part 745, Subpart E, they are "chemical control" in nature, violation of which poses a medium probability of impacting human health and the environment. In accordance with the ERPP, EPA assigns this alleged violation a Circumstance Level of 3a.[17]

26. Because no individuals younger than 18 resided in the Property at the time of the renovation, I used a minor extent factor for this alleged violation.

27. Consistent with the applicable GBP, I determined that the gravity-based penalty for this Circumstance Level 3a violation with a minor extent is $4,500.

Count 4

28. Count 4 of the Complaint alleges that Respondent violated 40 C.F.R. § 745.89(d)(3) on March 5, 2016, by failing to ensure all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Count 4 of the Complaint alleges that Respondent violated 40 C.F.R. § 745.85(a)(4)(i), and therefore 40 C.F.R. § 745.89(d)(3), in that:

> [t]he EPA investigation revealed that Respondent, on March 5, 2016, failed to contain waste from renovation activities to prevent releases of dust and

[16] EPA has decided to withdraw from Count 3 this specific allegation that Respondent failed to close windows in the work area on March 3, 2016. Regardless, Count 3 still stands because of the remaining allegation that Respondent violated 40 C.F.R. § 745.85(a)(4)(i), and therefore 40 C.F.R. § 745.89(d)(3), on March 3, 2016, by failing to contain waste.

[17] *See* FN 15, above.

> debris before waste was removed from the work area for storage or disposal. Specifically, the video and photographs taken by a neighbor on March 5, 2016 depict releases of dust and debris from Respondent's renovation activities.

29. Because these regulatory requirements are found in 40 C.F.R. Part 745, Subpart E, they are "chemical control" in nature, violation of which poses a medium probability of impacting human health and the environment. In accordance with the ERPP, EPA assigns this alleged violation a Circumstance Level of 3a.[18]

30. Because no individuals younger than 18 resided in the Property at the time of the renovation, I used a minor extent factor for this alleged violation.

31. Consistent with the applicable GBP, I determined that the gravity-based penalty for this Circumstance Level 3a violation with a minor extent is $4,500.

Count 5

32. Count 5 of the Complaint alleges that Respondent violated 40 C.F.R. § 745.89(d)(3) on March 6, 2016, by failing to ensure all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Count 5 of the Complaint alleges that Respondent violated 40 C.F.R. § 745.85(a)(4)(i), and therefore 40 C.F.R. § 745.89(d)(3), in that;

> [t]he EPA investigation revealed that Respondent, on March 6, 2016, failed to contain waste from renovation activities to prevent releases of dust and debris before waste was removed from the work area for storage or disposal. Specifically, the videos taken by a neighbor on March 6, 2016, depict releases of dust and debris from Respondent's renovation activities which migrated to an adjacent property, where a child or children resided.

33. Because these regulatory requirements are found in 40 C.F.R. Part 745, Subpart E, they are "chemical control" in nature, violation of which poses a medium probability of

[18] *See* FN 15, above.

impacting human health and the environment. In accordance with the ERPP, EPA assigns this alleged violation a Circumstance Level of 3a.[19]

34. Because no individuals younger than 18 resided in the Property at the time of the renovation, I used a minor extent factor for this alleged violation.

35. Consistent with the applicable GBP, I determined that the gravity-based penalty for this Circumstance Level 3a violation with a minor extent is $4,500.

Count 6

36. Count 6 of the Complaint alleges that Respondent violated 40 C.F.R. § 745.89(d)(3) on March 7, 2016, by failing to ensure all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Count 6 of the Complaint alleges that Respondent violated 40 C.F.R. § 745.85(a)(4)(i), and therefore 40 C.F.R. § 745.89(d)(3), in that:

> [t]he EPA investigation revealed that Respondent, on March 7, 2016, failed to contain waste from renovation activities to prevent releases of dust and debris before waste was removed from the work area for storage or disposal. Specifically, photographs taken by the City of St. Louis lead inspector on March 7, 2016 depict uncontained waste from renovation activities. Further, samples of dust from the neighboring property taken by the City of St. Louis lead inspector on March 7, 2016 tested positive for lead.

Count 6 further alleges that Respondent violated 40 C.F.R. § 745.85(a)(2)(i)(C), and therefore 40 C.F.R. § 745.89(d)(3), in that: "[t]he EPA investigation revealed that Respondent failed to close windows in the work area on March 7, 2016. Specifically,

[19] *See* FN 15, above.

photographs taken by the City of St. Louis lead inspector on March 7, 2016 depict open windows in the work area."

37. Because these regulatory requirements are found in 40 C.F.R. Part 745, Subpart E, they are "chemical control" in nature, violation of which poses a medium probability of impacting human health and the environment. In accordance with the ERPP, EPA assigns this alleged violation a Circumstance Level of 3a.[20]

38. Because no individuals younger than 18 resided in the Property at the time of the renovation, I used a minor extent factor for this alleged violation.

39. Consistent with the applicable GBP, I determined that the gravity-based penalty for this Circumstance Level 3a violation with a minor extent is $4,500.

Count 7

40. Count 7 of the Complaint alleges that Respondent violated 40 C.F.R. § 745.89(d)(3) on March 8, 2016, by failing to ensure all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Count 7 of the Complaint alleges that Respondent violated 40 C.F.R. § 745.85(a)(4)(i), and therefore 40 C.F.R. § 745.89(d)(3), in that:

> [t]he EPA investigation revealed that Respondent, on March 8, 2016, failed to contain waste from renovation activities to prevent releases of dust and debris before waste was removed from the work area for storage or disposal. Specifically, the videos taken by a neighbor on March 8, 2016, depict releases of dust and debris from Respondent's renovation activities which migrated to an adjacent property, where a child or children resided.

Count 7 further alleges that Respondent violated 40 C.F.R. § 745.85(a)(2)(i)(C), and therefore 40 C.F.R. § 745.89(d)(3), in that: "[t]he EPA investigation revealed that Respondent failed to close windows in the work area on March 8, 2016. Specifically, the

[20] *See* FN 15, above.

videos and photographs taken by a neighbor on March 8, 2016 depict open windows in the work area." Count 7 further alleges that Respondent violated 40 C.F.R. § 745.85(a)(4)(ii), and therefore 40 C.F.R. § 745.89(d)(3), in that:

> [t]he EPA investigation revealed that Respondent failed to collect, at the conclusion of the work day on March 8, 2016, the waste and store it under containment, in an enclosure, or behind a barrier that prevented the release of dust and debris out of the work area and prevented access to dust and debris. Specifically, photographs taken by the City of St. Louis lead inspector on the morning of March 9, 2016 depict uncontained waste in an open dumpster in the same location as that depicted in photographs taken by a neighbor on March 8, 2016.

41. Because these regulatory requirements are found in 40 C.F.R. Part 745, Subpart E, they are "chemical control" in nature, violation of which poses a medium probability of impacting human health and the environment. In accordance with the ERPP, EPA assigns this alleged violation a Circumstance Level of 3a.[21]

42. Because no individuals younger than 18 resided in the Property at the time of the renovation, I used a minor extent factor for this alleged violation.

43. Consistent with the applicable GBP, I determined that the gravity-based penalty for this Circumstance Level 3a violation with a minor extent is $4,500.

Count 8

44. Count 8 of the Complaint alleges that Respondent violated 40 C.F.R. § 745.89(d)(3) on March 9, 2016, by failing to ensure all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Count 8 of the Complaint alleges that Respondent violated 40 C.F.R. § 745.85(a)(4)(i), and therefore 40 C.F.R. § 745.89(d)(3), in that:

> [t]he EPA investigation revealed that Respondent, on March 9, 2016, failed to contain waste from renovation activities to prevent releases of dust and

[21] *See* FN 15, above.

> debris before waste was removed from the work area for storage or disposal. Specifically, photographs taken by the City of St. Louis lead inspector on March 9, 2016 depict uncontained waste from renovation activities.

Count 8 further alleges that Respondent violated 40 C.F.R. § 745.85(a)(2)(i)(C), and therefore 40 C.F.R. § 745.89(d)(3), in that "[t]he EPA investigation revealed that Respondent failed to close windows in the work area on March 9, 2016. Specifically, photographs taken by the City of St. Louis lead inspector on March 9, 2016 depict open windows in the work area."

45. Because these regulatory requirements are found in 40 C.F.R. Part 745, Subpart E, they are "chemical control" in nature, violation of which poses a medium probability of impacting human health and the environment. In accordance with the ERPP, EPA assigns this alleged violation a Circumstance Level of 3a.[22]

46. Because no individuals younger than 18 resided in the Property at the time of the renovation, I used a minor extent factor for this alleged violation.

47. Consistent with the applicable GBP, I determined that the gravity-based penalty for this Circumstance Level 3a violation with a minor extent is $4,500.

Count 9

48. Count 9 of the Complaint alleges that Respondent violated 40 C.F.R. § 745.89(d)(3) on March 15, 2016, by failing to ensure all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Count 9 of the Complaint alleges that Respondent violated 40 C.F.R. § 745.85(a)(1), and therefore 40 C.F.R. § 745.89(d)(3), in that:

> [t]he EPA investigation revealed that Respondent, on March 15, 2016, failed to post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside

[22] *See* FN 15, above.

> the work area. Specifically, photographs taken by an EPA representative on March 15, 2016 depict the lack of signage.

Count 9 further alleges that Respondent violated 40 C.F.R. § 745.85(a)(4)(i), and therefore 40 C.F.R. § 745.89(d)(3), in that:

> [t]he EPA investigation revealed that Respondent, on March 15, 2016, failed to contain waste from renovation activities to prevent releases of dust and debris before waste was removed from the work area for storage or disposal. Specifically, photographs taken by an EPA representative on March 15, 2016 depict uncontained waste from renovation activities.

49. Because these regulatory requirements are found in 40 C.F.R. Part 745, Subpart E, they are "chemical control" in nature, violation of which poses a medium probability of impacting human health and the environment. In accordance with the ERPP, EPA assigns this alleged violation a Circumstance Level of 3a.[23]

50. Because no individuals younger than 18 resided in the Property at the time of the renovation, I used a minor extent factor for this alleged violation.

51. Consistent with the applicable GBP, I determined that the gravity-based penalty for this Circumstance Level 3a violation with a minor extent is $4,500.

Penalty Adjustment Factors

52. Consistent with TSCA and the ERPP, I then considered whether any upward or downward adjustments to the total gravity-based penalty were appropriate. The ERPP provides a number of factors that enforcement personnel may consider to modify the gravity-based penalty, including the violator's ability to pay/ability to continue in business, history of prior such violations, degree of culpability, and such other matters as justice may require, including the violator's voluntary disclosure of violations, attitude

[23] *See* FN 15, above.

during negotiations, and any other case-specific facts that justify further reduction of the penalty.[24]

53. Despite numerous efforts by Complainant to reach Respondent, Respondent did not engage EPA after the lone initial prefiling conference on November 29, 2018, nor after the filing of the Complaint. Respondent never provided EPA any of the financial documentation it requested. Therefore, I had inadequate information to justify adjustments to the gravity-based penalty based upon Respondent's ability to pay or to continue in business, degree of culpability, or attitude during negotiations. Because Respondent did not respond to EPA's multiple requests for financial information in order for it to evaluate Respondent's ability to pay prior to or after the filing of the Complaint, I had inadequate information to determine whether the penalty warranted a downward adjustment to reflect Respondent's ability to pay or continue in business.

54. I further determined that no upward adjustment to the penalty was appropriate because Respondent had no history of prior such violations or an enhanced degree of culpability.

Economic Benefit of Noncompliance

55. Consistent with TSCA and the ERPP, I then considered whether an economic benefit component should be added to the proposed civil penalty.

56. The economic benefit component of a civil penalty removes any significant economic and competitive advantage of a respondent's noncompliance with the law. The ERPP provides that "[a]n economic benefit component should be calculated . . . when a violation results in 'significant' economic benefit to the violator. 'Significant' is defined as an economic benefit that totals more than $50 per room renovated per renovation

[24] Ex. H, at pp. 17-24.

project for all applicable violations alleged in the complaint."[25] Because I determined that the economic benefit resulting to Respondent was less than $50 per room for each violation alleged in the Complaint, and therefore not "significant" as defined in the ERPP, an economic benefit component was not included in the proposed penalty assessment.

Inflation Adjustment

57. The total penalty before inflation for the 9 Counts stated above is $40,500.

58. Pursuant to the January 11, 2018 Memorandum entitled "Amendments to the EPA's Civil Policies to Account for Inflation (effective January 15, 2018) and transmittal of the 2018 Civil Monetary Inflation Adjustment Rule,"[26] because the alleged TSCA Lead-Based Paint violations occurred after November 2, 2015, and penalties were assessed after January 15, 2018, I applied the inflation multiplier of 1.03711, for TSCA Lead-Based Paint violations, to the total penalty. The resulting penalty with inflation, rounded to the nearest dollar, [27] is $42,003 ($40,500 X 1.03711).

Total Proposed Penalty

59. Consistent with TSCA and the ERPP, I determined that an appropriate civil penalty for the violations alleged in the Complaint was $42,003.

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[25] *Id.* at pp. 11-12.

[26] At the time the complaint was filed, this was the policy in effect. https://www.epa.gov/sites/production/files/2020-12/documents/amendmentstotheepascivilpenaltypoliciestoaccountforinflation011518.pdf (last visited on February 13, 2021).

[27] The 2018 Civil Monetary Inflation Adjustment rule states that:

> [The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015] requires agencies to: (1) Adjust the level of statutory civil penalties with an initial ''catch-up'' adjustment through an interim final rulemaking; and (2) beginning January 15, 2017, make subsequent annual adjustments for inflation. The purpose of the 2015 Act is to maintain the deterrent effect of civil penalties by translating originally enacted statutory civil penalty amounts to today's dollars **and rounding statutory civil penalties to the nearest dollar.**

83 Fed. Reg. 1191 (Jan. 10, 2018) (emphasis added).

Exhibit I

I declare under penalty of perjury that the foregoing is true and correct.

Date: _____

CASSANDRA MANCE Digitally signed by CASSANDRA MANCE Date: 2021.02.17 17:10:00 -06'00'

Cassandra Mance
Tanks & Lead-Based Paint Section
Tanks, Toxics, & Pesticides Branch
Land, Chemical, & Redevelopment Division
U.S. Environmental Protection Agency,
Region 7

Exhibit I

Penalty Calculation Worksheet
The Askins Development Group, LLC

Address of Target Housing	Year Built	Children (ages)	Date of Contract	Date Work Performed	Deviations/ Deficiencies
3429 Missouri Ave. St. Louis, MO	1879	0 (Vacant)	Unknown	Began in February 2016	Failure to comply with the Subpart E – Residential Property Renovation

Violation	Extent	Circumstance	Gravity Based Penalty
Count 1-40 C.F.R. §§ 745.89(a)(1) & 745.81(a)(2)(ii)-Failure to obtain initial firm certification from EPA	Minor	Level 3a	$4,500
February 29, 2016			
Count 2-40 C.F.R. § 745.89(d)(3) – Failure of a firm to ensure all renovations are performed in accordance with the work practices standards in § 745.85. Specifically: • 40 C.F.R. § 745.85(a)(2)(i)(C)-Failure by the renovation firm to close windows and doors in the work area, cover doors with plastic sheeting or other impermeable material, and/or cover doors used as an entrance to the work with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area. • 40 C.F.R. § 745.85(a)(4)(i)-Failure to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.	Minor	Level 3a	$4,500
March 3, 2016			
Count 3-40 C.F.R. § 745.89(d)(3) – Failure of a firm to ensure all renovations are performed in accordance with the work practices standards in § 745.85. Specifically: • 40 C.F.R. § 745.85(a)(4)(i)-Failure to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.	Minor	Level 3a	$4,500

Exhibit I

Penalty Calculation Worksheet
The Askins Development Group, LLC

Violation	Extent	Circumstance	Gravity Based Penalty
March 5, 2016			
Count 4-40 C.F.R. § 745.89(d)(3) – Failure of a firm to ensure all renovations are performed in accordance with the work practices standards in § 745.85. Specifically: • 40 C.F.R. § 745.85(a)(4)(i)-Failure to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.	Minor	Level 3a	$4,500
March 6, 2016			
Count 5-40 C.F.R. § 745.89(d)(3) – Failure of a firm to ensure all renovations are performed in accordance with the work practices standards in § 745.85. Specifically: • 40 C.F.R. § 745.85(a)(4)(i)-Failure to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.	Minor	Level 3a	$4,500
March 7, 2016			
Count 6-40 C.F.R. § 745.89(d)(3) – Failure of a firm to ensure all renovations are performed in accordance with the work practices standards in § 745.85. Specifically: • 40 C.F.R. § 745.85(a)(4)(i)-Failure to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. • 40 C.F.R. § 745.85(a)(2)(i)(C)-Failure by the renovation firm to close windows and doors in the work area, cover doors with plastic sheeting or other impermeable material, and/or cover doors used as an entrance to the work with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.	Minor	Level 3a	$4,500

Exhibit I

Penalty Calculation Worksheet
The Askins Development Group, LLC

Violation	Extent	Circumstance	Gravity Based Penalty
March 8, 2016			
Count 7-40 C.F.R. § 745.89(d)(3) – Failure of a firm to ensure all renovations are performed in accordance with the work practices standards in § 745.85. Specifically: • 40 C.F.R. § 745.85(a)(4)(i)-Failure to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. • 40 C.F.R. § 745.85(a)(2)(i)(C)-Failure by the renovation firm to close windows and doors in the work area, cover doors with plastic sheeting or other impermeable material, and/or cover doors used as an entrance to the work with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area. • 40 C.F.R. § 745.85(a)(4)(ii)-Failure by the renovation firm to collect, at the conclusion of each work day, the waste and store it under containment, in an enclosure, or behind a barrier that prevents the release of dust and debris out of the work area and prevents access to dust and debris.	Minor	Level 3a	$4,500
March 9, 2016			
Count 8-40 C.F.R. § 745.89(d)(3) – Failure of a firm to ensure all renovations are performed in accordance with the work practices standards in § 745.85. Specifically: • 40 C.F.R. § 745.85(a)(4)(i)-Failure to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. • 40 C.F.R. § 745.85(a)(2)(i)(C)-Failure by the renovation firm to close windows and doors in the work area, cover doors with plastic sheeting or other impermeable material, and/or cover doors used as an entrance to the work with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.	Minor	Level 3a	$4,500

Exhibit I

Penalty Calculation Worksheet
The Askins Development Group, LLC

Violation	Extent	Circumstance	Gravity Based Penalty
March 15, 2016			
Count 9-40 C.F.R. § 745.89(d)(3) – Failure of a firm to ensure all renovations are performed in accordance with the work practices standards in § 745.85. Specifically: • 40 C.F.R. § 745.85(a)(1)-Failure to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside the work area; to prepare, to the extent practicable, signs in the primary language of the occupants; and/or to post signs before beginning the renovation and make sure they remain in place and readable until post-renovation cleaning verification has been completed. • 40 C.F.R. § 745.85(a)(4)(i)-Failure to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.	Minor	Level 3a	$4,500
SUBTOTAL			$40,500
INFLATION MULTIPLIER OF 1.03711			$1,503
TOTAL PENALTY WITH INFLATION MULTIPLIER ROUNDED TO THE NEAREST DOLLAR			**$42,003**