



3. The Complainant, by delegation from the Administrator of the EPA, is the Chief of the Toxics and Pesticides Branch at EPA, Region 7.

4. Respondent is an individual named Matthew Young.

#### Statutory and Regulatory Background

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. One of the stated purposes of the Act is to implement a broad program to reduce lead-based paint hazards in the Nation's housing stock. 42 U.S.C. § 4851a. The Act amended TSCA by adding Title IV - Lead Exposure Reduction, TSCA Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

6. Section 402 of TSCA, 15 U.S.C. § 2682, requires that the Administrator of EPA promulgate regulations regarding the activities of individuals and contractors engaged in lead-based paint activities, including renovation of residences built prior to 1978, and regulations for the certification of such individuals and contractors.

7. 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"). *See* Lead, Renovation, Repair, and Painting Program, 73 Fed. Reg. 21692, 21758 (issued Mar. 31, 2008) (codified at 40

C.F.R. Part 745, Subpart E). The RRP Rule pertains to lead-based paint activities, and the regulations set forth work practice standards for the renovation of residences built prior to 1978 and require certification of individuals and firms who are involved in these activities.

8. Section 401(17) of TSCA, 15 U.S.C. § 2681(17) defines *target housing* to mean 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 zero-bedroom dwelling.

9. 40 C.F.R. § 745.83 defines *renovation* to mean 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.

10. 40 C.F.R. § 745.89(a)(1) provides that “[f]irms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.”

11. 40 C.F.R. § 745.89(d)(2) requires firms performing renovations to ensure that “[a] certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90 [Renovator Certification and Dust Sampling Technician Certification].”

12. The RRP Rule sets forth the regulations for “Work Practice Standards” that must be followed by firms performing renovations on target housing. These work practice standards are outlined in 40 C.F.R § 745.85, and they require, in pertinent part:

(a) Occupant Protection.

(1) Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed. 40 C.F.R. § 745.85(a)(1);

(2) For “Interior renovations” a firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed. 40 C.F.R. § 745.85(a)(2)(i)(A)

(B) Close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material. 40 C.F.R. § 745.85(a)(2)(i)(B)

(C) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater. Floor containment measures may stop at the edge of the vertical barrier when using a vertical containment system consisting of impermeable barriers that extend from the floor to the ceiling and are tightly sealed at joints with the floor, ceiling and walls. 40 C.F.R. § 745.85(a)(2)(i)(D)

(D) *Remaining surfaces.* Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs. 40 C.F.R. § 745.85(a)(5)(ii)(B)

(3) For “Exterior renovations” a firm must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering. Ground containment measures may stop at the edge of the

vertical barrier when using a vertical containment system. 40 C.F.R. § 745.85(a)(2)(ii)(c)

13. Failure to comply with any provision of 40 C.F.R. Part 745, Subpart E (RRP Rule) violates Section 409 of TSCA, 15 U.S.C. § 2689, which may subject the violator to administrative penalties under section 16(a) of TSCA, 15 U.S.C. § 2615(a) and 40 C.F.R. § 745.87(d).

14. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. § 745.87(d) authorize the EPA Administrator to assess a civil penalty of up to \$25,000 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. Each day that such a violation continues constitutes a separate violation of section 15 of TSCA, 15 U.S.C. § 2614. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred after January 12, 2009.

#### **General Factual Allegations**

15. Presently, and at the time of the actions described herein, Respondent has been an individual providing residential renovation services, including window replacement. Therefore, at the time of the renovation described herein, Respondent was a “firm” as defined in 40 C.F.R. § 745.83.

16. On September 19, 2012, Respondent performed renovations on residential property located at 4512 E. 112<sup>th</sup> Terrace in, Kansas City, Missouri (“the Property”). The renovation project involved the replacement of eight windows, which Respondent performed.

17. At all times relevant to this Complaint, the renovation project at the Property was a “renovation for compensation” subject to the RRP Rule. *See* 40 C.F.R. § 745.82.

18. The Property was constructed before 1978 and is target housing as defined by 40 C.F.R. § 745.103. One of the occupants of the Property was pregnant at the time of the renovation.

19. On September 21, 2012, an inspector from EPA Region 7 conducted a site visit of the work site at the Property to evaluate Respondent's compliance with the RRP Rule. On February 5, 2013, an inspector from EPA Region 7 followed up the site visit of the work site at the Property with an inspection of Respondent's records relating to the renovation.

20. As a result of the inspections and additional information obtained by EPA, Complainant has identified the following violation of Section 409 of TSCA, the Residential Lead-Based Paint Hazard Reduction Act of 1992, and the RRP Rule, as set forth in 40 C.F.R. Part 745, Subpart E.

#### **Alleged Violations**

The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

#### **Count One**

21. Each and every preceding paragraph is incorporated by reference herein.

22. Pursuant to 40 C.F.R. § 745.89(a)(1), firms performing renovations for compensation must be certified by the EPA and have obtained initial certification prior to performance of renovations.

23. At the time of the renovation of the Property, Respondent had not obtained initial certification to be a firm performing renovations for compensation.

24. Respondent's failure to ensure that it obtained initial firm certification prior to the removal and replacement of the patio door at the Property for compensation constitutes a

violation of 40 C.F.R. § 745.89(a)(1). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

**Count Two**

25. Each and every preceding paragraph is incorporated by reference herein.

26. Pursuant to 40 C.F.R. § 745.85(a)(1), firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed.”

27. At no time during the renovation of the Property did Respondent post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area.

28. Respondent’s failure to post the required signage described above constitutes a violation of 40 C.F.R. § 745.85(a)(1) and, therefore, a violation of Section 409 of TSCA, 15 U.S.C. § 2689.

**Count Three**

29. Each and every preceding paragraph is incorporated by reference herein.

30. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(A), firms performing interior renovations for compensation must remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

31. Although the renovation at the Property included interior renovation for

compensation, Respondent failed to remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed, as required.

32. Respondent's failure to comply with 40 C.F.R. § 745.85(a)(2)(i)(A) is a violation of that regulation and Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

#### **Count Four**

33. Each and every preceding paragraph is incorporated by reference herein.

34. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(B), firms performing interior renovations for compensation must close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

35. Although the renovation at the Property included interior renovation for compensation, Respondent failed to close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material, as required.

36. Respondent's failure to comply with 40 C.F.R. § 745.85(a)(2)(i)(B) is a violation of that regulation and Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

#### **Count Five**

37. Each and every preceding paragraph is incorporated by reference herein.

38. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(D), firms performing interior renovations for compensation must cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

39. Although the renovation at the Property included interior renovation for compensation, Respondent failed to cover the floor surface, including installed carpet, with

taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, as required.

40. Respondent's failure to comply with 40 C.F.R. § 745.85(a)(2)(i)(D) is a violation of that regulation and Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

#### **Count Six**

41. Each and every preceding paragraph is incorporated by reference herein.

42. Pursuant to 40 C.F.R. § 745.85(a)(5)(ii)(B) firms performing interior renovations for compensation must thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs.

43. Although the renovation at the Property included interior renovation for compensation, Respondent failed to thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum.

44. Respondent's failure to comply with 40 C.F.R. § 745.85(a)(5)(ii)(B) is a violation of that regulation and Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

#### **Count Seven**

45. Each and every preceding paragraph is incorporated by reference herein.

46. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(c) firms performing exterior renovations for compensation must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering.

47. Although the renovation at the Property included exterior renovation for compensation, Respondent failed to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, as required.

48. Respondent's failure to comply with 40 C.F.R. § 745.85(a)(2)(ii)(c) is a violation of that regulation and Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

### **Relief**

49. Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615 for violations of Section 409 of TSCA, 15 U.S.C. § 2689. Pursuant to Section 16 of TSCA, 15 U.S.C. 2615, and based upon the facts set forth above, it is proposed that a civil administrative penalty be assessed against Respondent.

50. Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. 2615 for violations of Section 409 of TSCA, 15 U.S.C. 2689. Pursuant to section 16 of TSCA, 15 U.S.C. and, based upon the facts set forth above, it is proposed that a civil administrative penalty be assessed against Respondent.

51. Section 16(a) of TSCA, 42 U.S.C. § 2615, and 40 C.F.R. § 745.87(d), authorize the EPA Administrator to assess a civil penalty of up to \$25,000 for each violation of Section 409 of TSCA. Each day that such a violation continues constitutes a separate violation of Section 15 of TSCA, 15 U.S.C. § 2614. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred after January 12, 2009.

52. The proposed penalty is based upon the facts alleged in this Complaint and upon the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. 2615(a)(2)(B), including the nature,

circumstances, extent and gravity of the violations, and with respect to the Respondents: a) their ability to pay, b) the effect on their ability to continue to do business, c) any history of prior violations, d) the degree of culpability, and e) such other matters as justice may require.

53. 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 One Hundred Eighty-Nine Thousand Three Hundred Dollars (\$189,300) for the TSCA violations alleged in this Complaint (*See Attachment 1 to this Complaint explaining the reasoning for this penalty.*).

54. The proposed penalty is based on the best information available to EPA at the time the Complaint is issued. The penalty may be adjusted if the Respondents establish bona fide issues of ability to pay or other defenses relevant to the appropriate amount of the proposed penalty.

#### **Payment of Proposed Penalty in Full**

55. A Respondent may resolve this proceeding at any time by paying the full penalty proposed in the Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk. Payment of the total penalty, \$189,300 may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

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

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read  
“D 68010727 Environmental Protection Agency”

A copy of the check must simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219;

and

Raymond C. Bosch, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219.

Checks should reference the name and docket number of this Complaint.

**Payment of Proposed Penalty in Lieu of an Answer**

56. A Respondent who wishes to resolve a proceeding by paying the proposed penalty in full instead of filing an answer to the Complaint may do so within thirty (30) days of receipt of the Complaint, in accordance with the procedures set forth above. A Respondent who wishes to resolve a proceeding by paying the proposed penalty in full instead of filing an answer but who

needs additional time to pay the penalty, may file a written statement with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint, in accordance with Rule 22.18(a)(1) of the Consolidated Rules. The written statement shall state that Respondent agrees to pay the proposed penalty in full within sixty (60) days of receipt of the Complaint. The written statement need not contain any response to, or admission of, the allegations in the Complaint. A Respondent must then pay the full amount of the proposed penalty within sixty (60) days of receipt of the Complaint. Failure to pay the full penalty within sixty (60) days of receipt of the Complaint may subject a Respondent to default, as set forth below.

### **NOTICE OF OPPORTUNITY FOR HEARING**

#### **Answer and Request for Hearing**

57. A Respondent must file a written answer within thirty (30) days of receipt of this Complaint if Respondent: a) contests any material fact upon which this Complaint is based; b) contends that the penalty proposed in this Complaint is inappropriate; or c) contends that it is entitled to judgment as a matter of law. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which a Respondent has any knowledge. Where a Respondent has no knowledge of a particular factual allegation, the answer shall so state. Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes an admission of the allegation. The answer shall also state: a) the circumstances or arguments which are alleged to constitute the grounds of any defense; b) the facts that a Respondent disputes; c) the basis for opposing the proposed penalty; and d) whether a hearing is requested.

58. The original and one copy of the answer shall be filed with the following, in accordance with Section 22.15 of the Consolidated Rules:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219

A copy of the answer shall be sent to:

Raymond C. Bosch, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219.

### **Default**

59. If, within thirty (30) days of receipt of a Complaint, a Respondent fails to: a) submit full payment of the proposed penalty, b) submit a written statement to the Regional Hearing Clerk that Respondent agrees to pay the penalty within sixty (60) days of receipt of the Complaint, or c) file a written answer to the Complaint, a Respondent may be found in default. Default by a Respondent constitutes, for the purposes of this proceeding, an admission of all facts alleged in the Complaint and a waiver of a Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalty proposed in the Complaint shall be assessed unless the Presiding Officer finds that the proposed penalty is clearly inconsistent with the record of the proceeding or TSCA.

### **Informal Settlement Conference**

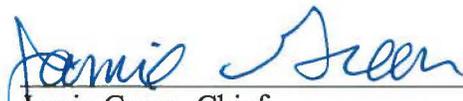
60. The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of TSCA and the regulations upon which this action is based. Regardless of whether a Respondent requests a hearing, a Respondent may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request an informal settlement conference, please contact:

Raymond C. Bosch, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
Telephone (913) 551-7501

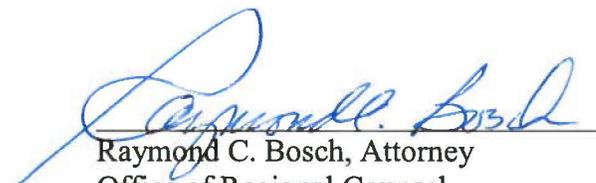
61. Any settlement which may be reached as a result of such a conference shall be recorded in a written consent agreement signed by all parties or their representatives and shall conform with the provisions of Section 22.18(b)(2) of the Consolidated Rules. No settlement or consent agreement shall dispose of this proceeding without a final order from the Regional Judicial Officer or the Regional Administrator.

62. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer must be filed.

Date: 3-16-2015

  
\_\_\_\_\_  
Jamie Green, Chief  
Toxics and Pesticides Branch  
Water, Wetlands & Pesticides Division

Date: March 13, 2015

  
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Raymond C. Bosch, Attorney  
Office of Regional Counsel

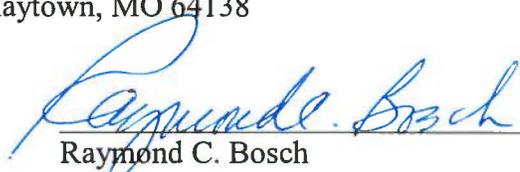
Attachment

CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing were hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219, on March 19<sup>th</sup>, 2015.

A true and correct copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing together with a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits were sent by certified mail, return receipt requested, on March 19<sup>th</sup>, 2015 to

Matthew Young  
8417 Woodson Place  
Raytown, MO 64138

  
\_\_\_\_\_  
Raymond C. Bosch  
Assistant Regional Counsel

## Penalty Calculation:

Because there was a pregnant woman residing in the target housing unit, EPA Region 7 assigned a Major level of harm on the "Extent" for all violations except the violation for failure to obtain an initial firm certification. The "Extent" for the firm certification is based on the size of firm and number of renovations performed. These calculations are based on the penalty matrix set forth in the *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). The complete penalty calculation is as follows:

Violation	Extent	Circumstance	Gravity Based Penalty
745.89(a) Failure of a firm to obtain initial certification from EPA	Significant	Level 3a	15,300
745.85(a)(2)(i)(A) Failure by the renovation firm to remove all objects from the work area, including furniture, rugs and window coverings or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed	Major	Level 2a	30,000
745.85(a)(2)(i)(B) Failure by the renovation firm, before beginning the renovation, to close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material	Major	Level 2a	30,000
745.85(a)(2)(i)(D) Failure by the renovation firm, before beginning the renovation, to cover floor surface, including installed carpet, with taped down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces	Major	Level 2a	30,000

undergoing renovation or a sufficient distance to contain the dust, whichever is greater.			
745.85(a)(5)(ii)(B) Failure by the renovation firm to thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum	Major	Level 1a	37,500
745.85(a)(2)(ii)(c) Failure by the renovation firm, before beginning the renovation, to cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surface undergoing renovation	Major	Level 2a	30,000
745.85(a)(1) Failure of firms to post signs clearly defining the work area and warning occupants and others not involved in the renovation activity to remain outside of the work area	Major	Level 1b	16,500
<b>Total Penalty</b>			<b>\$189,300</b>