

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:)	
)	
)	
Premier Flipping LLC)	
8 Meadowlark Road)	EPA Docket No.
Enfield, Connecticut 06082)	TSCA-01-2018-0017
)	
Respondent.)	
)	
Proceeding under Section 16(a) of the)	
Toxic Substances Control Act,)	
15 U.S.C. § 2615(a))	
)	

INITIAL DECISION AND DEFAULT ORDER

I. Introduction

This proceeding was commenced on September 28, 2018, with the filing of a Complaint by Complainant, the United States Environmental Protection Agency, Region 1 (“EPA” or “Complainant”), against Respondent, Premier Flipping LLC (“Premier Flipping” or “Respondent”), and is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”) found at 40 C.F.R. Part 22.

The Complaint charges Respondent with one violation of Section 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2689, and the federal regulations promulgated thereunder set forth at 40 C.F.R. Part 745, Subpart E (the “Renovation, Repair and Painting Rule” or “RRP Rule”). The Complaint proposed a total penalty of \$4,667.

Service of the Complaint was completed on July 25, 2019. To date, Respondent has

neither filed an Answer and nor requested an extension of time for filing an Answer.

Accordingly, for the reasons set out below, Respondent is found to be in default pursuant to 40 C.F.R. § 22.17(a) of the Consolidated Rules and is assessed the proposed penalty of \$4,667.

II. Findings of Fact and Conclusions of Law

1. The Complainant is EPA.

2. The Respondent is a Connecticut corporation that operates a residential repair, renovation, and painting business in the East Hartford area in Connecticut. Respondent's business address is 8 Meadowlark Rd., Enfield, Connecticut, 06082.

3. In 2017, Respondent was hired to install vinyl siding and aluminum trim on the exterior of a duplex building located at 32-34 Lilac Street, in East Hartford, Connecticut ("Subject Property"). According to East Hartford property records, the Subject Property is a two family, duplex building with six bedrooms built in 1900.

4. The renovations at the Subject Property came to the attention of EPA through a referral from the City of East Hartford, Connecticut Code Enforcement Office.

5. On May 16, 2017, EPA representatives ("Inspectors") conducted an inspection at the Subject Property while Respondent was performing work at the property. The Inspectors found deteriorating painted wood trim and deteriorating painted asbestos transite siding that was disturbed as part of the siding and trim replacement. The Inspectors also found the area surrounding the building to be covered in paint chips and debris from construction work.

6. During the EPA Inspection, Respondent admitted to the Inspectors that he was not a certified firm as required by the RRP Rule.

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

8. At the time of the Inspection, Respondent was not certified as a firm under the RRP Rule.
9. Respondent's activities at the Subject Property constituted a "renovation" as defined in 40 C.F.R. § 745.83.
10. Respondent's activities at the Subject Property constituted a "renovation for compensation" subject to the RRP Rule. See 40 C.F.R. § 745.82(a).
11. The Subject Property, having been built before 1978, was "target housing," as defined in Section 401(17) of TSCA and 40 C.F.R. § 745.103. Furthermore, the building does not satisfy the requirements for an exemption to the provisions of TSCA (including 15 U.S.C. § 2681(17)), or the RRP Rule (including 40 C.F.R. § 745.82(a)).
12. On March 16, 2018, EPA Region 1 issued to Respondent a "Notice of Investigation Results" and an "Expedited Settlement Agreement" that addressed a single RRP Rule violation, consistent with the EPA Office of Enforcement and Compliance Assurance's August 19, 2015 Lead-Based Paint Expedited Settlement Agreement Policy. Respondent did not respond to EPA's offer of expedited settlement.
13. On September 27, 2018, EPA Region 1 issued to Respondent by Certified Mail - Return Receipt Requested, a "Complaint and Notice of Opportunity for Hearing" ("Complaint") alleging one violation of the RRP Rule. EPA did not receive a signed return receipt from Respondent.
14. After nine unsuccessful attempts to serve Respondent by sending a copy of the Complaint by mail and through the use of a professional process server, Complainant served the Complaint, including a copy of the Consolidated Rules, on Respondent by hand on July 25, 2019. See 40 C.F.R. §§ 22.5(b)(1) & (b)(1)(ii)(A). Respondent accepted the complaint package and signed a statement that he had received the Complaint. Accordingly, service was completed on July 25, 2019.

15. Pursuant to 40 C.F.R. § 745.89(a)(1), firms that perform renovations for compensation must apply for EPA certification to perform renovations. Under 40 C.F.R. § 745.81(a)(2)(ii), no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89(a)(1) in target housing unless the renovation qualifies for one of the exceptions identified in 40 C.F.R. § 745.82. The Subject Property is target housing because it was built in 1900 and is not housing for the elderly or disabled or a 0-bedroom dwelling.

16. At the time of the renovation at the Subject Property, Respondent had neither applied for nor received RRP Rule firm certification from EPA. In performing an exterior renovation without certification from EPA under 40 C.F.R. § 745.89 at the Subject Property, Respondent violated 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a)(1). Respondent's failure to obtain RRP Rule firm certification prior to performing renovation work on the Subject Property constitutes a violation of 40 C.F.R. §§ 745.89(a) and 745.81(a)(2)(ii).

17. None of the exceptions identified in 40 C.F.R. § 745.82(a) apply to the renovation at the Subject Property.

DETERMINATION OF THE TSCA PENALTY AMOUNT

Consistent with the EPA Office of Enforcement and Compliance Assurance's August 19, 2015 Lead-Based Paint Expedited Settlement Agreement Policy, on March 16, 2018, EPA issued to Respondent a "Notice of Investigation Results" and an "Expedited Settlement Agreement," that addressed a single RRP Rule violation for performing, renovations or dust sampling for compensation without obtaining certification from EPA as required by 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a). The Expedited Settlement Agreement offered to resolve the alleged violation for a penalty of \$200, in accordance with this policy. Following Respondent's failure to respond to the Expedited Settlement Agreement, Complainant proceeded with the

filing of the Complaint.

Section 16(a) of TSCA authorizes the assessment of a civil penalty up to \$25,000 per day for each violation of the RRP Rule. Pursuant to the Debt Collection Improvement Act, 31 U.S.C. § 3701 note, and EPA's Civil Monetary Penalty Inflation Adjustment Rule ("Penalty Inflation Rule"), 40 C.F.R. Part 19, each TSCA violation that occurs after December 6, 2013 is subject up to \$37,500 per violation. 78 Fed. Reg. 66643 (November 6, 2013). Under the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461 note and the Penalty Inflation Rule, the \$37,500 maximum penalty was raised to \$39,873 for each violation that occurs after November 2, 2015 for penalties assessed on or after February 6, 2019. 84 Fed. Reg. 2056 (February 6, 2019), 84 Fed. Reg. 5955 (February 25, 2019).

Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires EPA to consider the following factors in determining the amount of any penalty assessed under Section 16: the nature, circumstances, extent, and gravity of the violation of violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and other such matters as justice may require. In addition, to assess a penalty for alleged violations of the RRP Rule, EPA must take into account the particular facts and circumstances of each case with specific reference to EPA's *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* ("ERPP").

The ERPP sets forth EPA's analysis of the TSCA statutory factors as they apply to, *inter alia*, violations of the RRP Rule and provides a calculation methodology for applying the statutory factors to particular cases. ERPP at 8. Under the ERPP, there are two components of a penalty calculation, namely (1) a determination of a gravity-based penalty based on the nature,

circumstances, and extent of harm that may result from a respondent's violations, and (2) an upward or downward adjustments of the gravity-based penalty component in light of a respondent's ability to pay the penalty, effect of the penalty on a respondent's ability to continue to do business, any history of prior such violations, the degree of a respondent's culpability, and such other matters as justice may require. ERPP at 9.

The gravity-based penalty component is determined by considering the nature and circumstances of a violation and the extent of harm that may result from a violation. The essential character of a violation is characterized as being of a "chemical control," "control-associated data gathering," or "hazard assessment" nature. ERPP at 14. A chemical control requirement is one which is "aimed at limiting exposure and risk presented by lead-based paint by controlling how lead-based paint is handled by renovators and abatement contractors." *Id.* Violations of the RRP Rule are usually characterized as "chemical control" in nature. The classification of the nature of a violation has a direct impact on the measures used to determine the circumstance and extent of harm classifications of a violation under the ERPP. ERPP at 14-15.

The circumstance level reflects the probability that an owner or occupant of target housing will suffer harm based on a particular violation. "[T]he greater the deviation from the regulations, the greater the likelihood that people will be uninformed about the hazards associated with lead-based paint and any renovations, that exposure will be inadequately controlled during renovations, or that residual hazards and exposures will persist after the renovation/abatement work is completed." ERPP at 15. Under the ERPP, circumstance levels range from a 1 to 6, with Levels 1 and 2 having the highest probability of harm, Levels 3 and 4 posing a medium probability of harm, and Levels 5 and 6 posing a low probability of harm.

ERPP at 15-16. Appendix A of the ERPP sets forth the circumstance levels for particular violations of the RRP. ERPP at A-1 to A-10.

The extent of harm level of a violation may be characterized as either Major, Significant, or Minor, depending on the degree, range and scope of a violation's potential for childhood lead poisoning. ERPP at 16-17. For housing units that are not occupied by children less than eighteen years of age, the appropriate extent of harm is Minor. ERPP at p. 17.

Note, however, that the initial calculation of the gravity-based penalty under the ERPP does not include an adjustment for inflation. To account for inflation, the initial penalty calculation must then be adjusted through the use of the appropriate multiplier. The appropriate multiplier is found in 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 ("Inflationary Guidance") (available at <https://www.epa.gov/enforcement/amendments-epas-civil-penalty-policies-account-inflation-effective-january-15-2018-and>), which specifies a multiplication factor of 1.03711 for most RRP violations. Inflationary Guidance at p. 13.

Analysis of the Penalty Calculation

Pursuant to Rule 22.17(c) of the Consolidated Rules, 40 C.F.R. § 22.17(c), with regard to the issuance of a Default Order, the relief proposed in the Complaint on Motion for Default shall be ordered unless it is "clearly inconsistent with the record of the proceeding or the Act." This provision also states that if a Default Order resolves all outstanding issue and claims in a proceeding, it shall constitute an Initial Decision.

For purposes of calculating a civil penalty to be assessed in an Initial Decision, a Presiding Officer is required to determine the penalty based on the evidence in the record of the

case and in accordance with any penalty criteria set forth in the underlying statute. 40 C.F.R. § 22.27(b). A Presiding Officer is also required to consider any applicable civil penalty guidelines. *Id.*

The following analysis of the penalty calculation for this matter is based upon the statutory factors, case-specific facts and the ERPP. The ERPP provides a rational, consistent and equitable methodology for applying the TSCA statutory factors to the facts and circumstances of this matter.

Count 1: Failure to Obtain Firm Certification Under RRP Rule

Pursuant to 40 C.F.R. § 745.81(a)(2), no firm may provide renovations in target housing for compensation without certification from EPA. Under § 745.89(a), firms that provide renovations must apply to EPA for certification to perform renovations. From January through February 2019, Respondent conducted renovation activities at the Subject Property without obtaining certification from EPA as required under 40 C.F.R. § 745.89(a). As a result, Respondent's performance of work without a firm certification was a violation of 40 C.F.R. §§ 745.81(a)(2) and 745.89(a) and a prohibited act under TSCA Section 409, 15 U.S.C. § 2689, and 40 C.F.R. § 745.87. A penalty may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

In accordance with the ERPP, the failure of a firm that performs renovations for compensation to obtain initial certification is assigned a circumstance level of 3a (medium). ERPP, Appendix A, page A-3. Because there were no occupants under the age of 18 in the target housing, it is appropriate to assign a Minor extent of harm level to this violation. Accordingly, the ERPP Gravity-Based Penalty for a Minor, circumstance level 3a violation is \$4,500. ERPP, Appendix B, page B-2. When this penalty is adjusted for inflation in accordance with the

1.03711 penalty adjustment required by the Inflationary Guidance, the penalty amount for this violation totals \$4,667.

I conclude that a \$4,667 penalty, which reflects the legal requirements and policy considerations discussed above, is an appropriate maximum penalty for Respondent's 40 C.F.R. §§ 745.81(a)(2) and 745.89(a) violation.

ORDER

For failing to file an Answer to the Complaint, Respondent is hereby found in **DEFAULT**.

Respondent, Premier Flipping LLC, is assessed a civil administrative penalty in the amount of \$4,667.

Payment of the full amount of this civil penalty shall be made within thirty (30) days after this Initial Decision becomes a final order under 40 C.F.R. § 22.27(c), as provided below.

Payment shall be made by submitting a bank, certified or cashier's check in the amount of \$4,667, payable to "Treasurer, United States of America." The check should also note the docket number of this matter (TSCA-01-2020-0009), and should be forwarded to:

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

A transmittal letter identifying the subject case and EPA docket number as well as Respondent's name and address, must accompany the check.

If Respondent fails to pay the penalty within the prescribed statutory period after entry of this Order, interest on the penalty may be assessed. See 31 U.S.C. § 3717; 40 C.F.R. § 13.11.

This Initial Decision shall become a final order forty-five (45) days after its service upon

the parties and without further proceedings unless (1) a party moves to reopen the hearing within twenty (20) days after service of this initial decision; (2) an appeal to the Environmental Appeals Board is taken within thirty (30) days after this Initial Decision is served upon the parties; or (3) the Environmental Appeals Board elects, upon its own initiative, to review this Initial Decision. 40 C.F.R. § 22.27(b); see also 40 C.F.R. §§ 22.28(a) & 22.30(b).

SO ORDERED THIS 4th DAY OF NOVEMBER 2020.

LeAnn Jensen
Regional Judicial Officer/Presiding Officer