

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 2

May 30, 2024 @ 3:43 pm

USEPA – Region II

Regional Hearing Clerk

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 In the Matter of :
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Clean Air Environmental Services, Inc., :
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 Respondent. :
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 :
 Proceeding under Section 16(a) of :
 the Toxic Substances Control Act. :
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COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

Docket No. TSCA-02-2024-9276

COMPLAINT

This is a civil administrative action instituted pursuant to Section 16(a), 15 U.S.C. § 2615(a), of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2601 *et seq.* This Complaint serves notice of Complainant’s preliminary determination that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subparts E and L, which were promulgated pursuant to 15 U.S.C. §§ 2682, 2686, and 2687.

Complainant in this proceeding, the Acting Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (“EPA”), Region 2, has been duly delegated the authority to institute this action. Complainant, as and for her Complaint against Respondent, hereby alleges upon information and belief:

STATUTORY AND REGULATORY BACKGROUND

1. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (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(2). The Act amended TSCA by adding *Title IV—Lead Exposure Reduction*, Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

2. Sections 402 and 406 of TSCA, 15 U.S.C. § 2682, require that the Administrator of EPA promulgate regulations governing the training and certification of individuals and contractors engaged in lead-based paint activities or renovations, including abatement or renovation of residences built prior to 1978, as well as standards for performing lead-based paint activities and renovations.

3. Section 409 of TSCA, 15 U.S.C. § 2689, makes it unlawful for any person to fail or refuse to comply with these sections of TSCA, as well as all other provisions, rules, or orders under Subchapter IV of TSCA.

4. 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, *Lead-Based Paint Activities*. In 1998, EPA promulgated regulations to implement Section 406(b) and Section 407 of TSCA, 15 U.S.C. §§ 2686(b) and 2687. These regulations were set forth at 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*. In 2008, EPA promulgated regulations to implement Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), by amending and recodifying regulations at 40 C.F.R. Part 745, Subparts E (“Renovation, Repair, and Painting Rule” or “RRP Rule”) and L (“Abatement Rule”), and adding additional regulations at 40 C.F.R. Subpart L. See *Lead; Renovation, Repair, and Painting Program*, 73 Fed. Reg. 21692, 21758 (Mar. 31, 2008).

5. The Abatement Rule, *inter alia*, establishes training and certification requirements for all individuals and firms engaged in lead-based paint activities, as well as work practice standards for performing such activities. Aspects of the work practice standards are found in regulations issued by the Department of Housing and Urban Development (HUD) at [24 C.F.R. Part 35, Subpart R](#) and in the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (HUD Guidelines).

6. The regulation at 40 C.F.R. § 745.223 defines “Lead-based paint activities” as inspection, risk assessment, and abatement.

7. The regulation at 40 C.F.R. § 745.223 defines “Abatement” as, in part, any measure or set of measures designed to permanently eliminate lead-based paint hazards, which includes, but is not limited to the removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, and the replacement of painted surfaces or fixtures, when lead-based paint hazards are present in such paint or dust. The term “abatement” does not include renovation, remodeling, landscaping or other activities not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards.

8. The regulation at 40 C.F.R. § 745.65 defines lead-based paint hazards and limits the application of certain work-practice standard requirements to indoor abatement activities involving at least two square feet of deteriorated lead-based paint per room or the equivalent or ten percent of the total surface area of deteriorated paint on an interior type of component with a small surface area. 40 C.F.R. § 745.65(d)(1) and (3).

9. The regulation at 40 C.F.R. § 745.223 defines “Certified firm” as a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which EPA has issued a certificate of approval pursuant to [§ 745.226\(f\)](#).

10. The RRP Rule, *inter alia*, establishes work practice standards for all renovations performed for compensation in target housing, and requires firms and individuals performing, offering, or claiming to perform such renovations to obtain EPA certification.

11. The regulation at 40 C.F.R. § 745.83 defines “Renovation,” in part, as 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, or planing thresholds to install weather stripping); and interim controls that disturb painted surfaces.

12. The regulation at 40 C.F.R. § 745.83 defines “Firm” as a company, partnership, corporation, sole proprietorship, or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

13. The regulations at 40 C.F.R. §§ 745.83 and 745.223 define “Person” as any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

14. Section 401(17) of TSCA, 15 U.S.C. § 2681(17), 40 C.F.R. § 745.223, defines “Target housing” as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any zero-bedroom dwelling (unless any child who is less than six years of age resides or is expected to reside in such housing).

15. The regulation at 40 C.F.R. § 745.227(e)(1) provides that an abatement shall be conducted only by an individual certified by EPA, and if conducted, shall be conducted according to the prescribed procedures.

16. The regulation at 40 C.F.R. § 745.227(e)(2) provides that a certified supervisor is required for each abatement project and shall be onsite during all work site preparation and during the post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be onsite or available to be contacted and become present at the work site in no more than 2 hours.

17. The regulation at 40 C.F.R. § 745.227(e)(3) provides *inter alia* that the certified firm shall ensure that all abatement activities are conducted according to the requirements of this section and all other Federal, State and local requirements.

18. The regulation at 40 C.F.R. § 745.227(e)(4)(ix) provides that no firm or individual shall engage in lead-based paint abatement activities, as defined in § 745.223, prior to notifying EPA of such activities, except in response to an elevated blood lead level (EBL) determination, or Federal, State, Tribal, or local emergency abatement order should be received by EPA as early as possible before, but must be received no later than the start date of the lead-based paint abatement activities.

19. The regulation at 40 C.F.R. § 745.227(e)(5) provides that a written occupant protection plan shall be developed for all abatement projects. The plan shall be unique to the

residential dwelling, developed prior to the abatement, and shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards. The occupant protection plan shall be prepared by a certified supervisor or project designer.

20. The regulation at 40 C.F.R. § 745.227(e)(8) provides that post-abatement clearance procedures shall be performed by a certified inspector or risk assessor, and include a visual inspection, any post-abatement cleanup required, and clearance sampling for lead in dust using approved techniques and methodologies.

21. The regulation at 40 C.F.R. § 745.227(e)(10) provides that a certified supervisor or project designer shall prepare an abatement report that includes the information required by this paragraph, including, but not limited to: start and completion dates of abatement; the name and address of each certified form and each supervisor assigned to the abatement; the occupant protection plan; the name, address and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing; the results of clearance testing and the name of each recognized laboratory that conducted the analyses; and a detailed written description of the abatement.

22. The regulation at 40 C.F.R. § 745.81(a)(2)(ii) provides that no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89 in target housing.

23. The regulation at 40 C.F.R. § 745.235(a) provides that failure or refusal to comply with any provision of 40 C.F.R. § 745.227 is a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Likewise, the regulation at 40 C.F.R. § 745.87(a) provides that failure or refusal to comply with any provision of 40 C.F.R. Part 745, Subpart E, is a violation of Section 409 of TSCA, 15 U.S.C. § 2689. Section 409 of TSCA, 15 U.S.C. § 2689, provides that it shall be unlawful for any person to fail to comply with, *inter alia*, a provision of this subchapter or with any rule or order issued under this subchapter.

24. The regulations at 40 C.F.R. §§ 745.87(d) and 745.235(e) provide that violators may be subject to civil sanctions pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

25. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), provides that any person who violates Section 409 of TSCA, 15 U.S.C. § 2689, shall be liable to the United States for a civil penalty of up to \$25,000 for each such violation. Each day that such a violation continues constitutes a separate violation of Section 409 of TSCA, 15 U.S.C. § 2614. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, in conjunction with the implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$48,512 for violations that occur or occurred after November 2, 2015, and are assessed on or after December 27, 2023. *See also* 88 Fed. Reg. 89309 (Dec. 27, 2023).

GENERAL FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

26. Respondent is Clean Air Environmental Services, Inc. (“Clean Air Environmental Services,” “Clean Air,” or “Respondent”).
27. Respondent is a corporation organized pursuant to the laws of the State of New York.
28. Respondent at all times relevant herein was a “person” as defined by 40 C.F.R. §§ 745.83 and 745.223 and a “firm” within the meaning of the RRP Rule.
29. Respondent’s primary place of business is located at 215 ½ North Perry Street, Johnstown, NY 12095.
30. At all relevant times, Respondent was engaged in business as contractors providing “environmental services,” including demolition, mold remediation, asbestos abatement, and “Lead Renovations.”
31. From April 30, 2015 until May 14, 2021, Respondent was certified by EPA (Certification # NY/LBP-F153170-1) to conduct lead-based paint activities pursuant to 40 C.F.R. § 745.226.
32. At all relevant times, Respondent was a “certified firm” within the definition of the Abatement Rule.
33. At all relevant times, a couple owned a house located at 2 Union Street, Schenectady, NY 12305.
34. The house located at 2 Union Street (“2 Union Street”) was built in 1790.
35. The living area at 2 Union Street is recorded to be approximately 3,479 square feet.
36. 2 Union Street is “target housing” within the meaning of Section 401(17) of TSCA, 15 U.S.C. § 2681(17), the Lead Abatement Rule, and the RRP Rule.
37. In January 2019, the owners of 2 Union Street reached out to Respondent to get quotes for a lead-based paint project at 2 Union Street.
38. No elevated blood lead level (EBL) determination had been made for any resident of 2 Union Street nor had a Federal, State, Tribal, or local emergency abatement order been issued for 2 Union Street.
39. Respondent sent the owners of 2 Union Street a proposal dated January 18, 2019 (“Proposal”) for “the removal or encapsulation & disposal of lead paint containing materials” of the lead-based paint at 2 Union Street. Respondent offered the owners two options: “Lead Paint

removed to bare wood substrate,” priced at forty-eight thousand, four hundred dollars (\$48,400.00), or “Scrapped/Patched Primed and Final painted,” priced at twenty-five thousand, four hundred and fifty dollars (\$25,450.00). Respondent includes as an assumption/clarification that they “will have sole occupancy of the abatement areas during the abatement process.”

Item	Description	Estimated Quantity	Unit	Price
1	Lead Paint removed to bare wood substrate	1	1	\$ 48,400.00
1	Scrapped/Patched Primed and Final painted	1	1	\$ 25,450.00

40. The owners of 2 Union Street accepted the first option provided, and agreed to compensate Respondent forty-eight thousand, four hundred dollars (\$48,400.00) in exchange for the services performed.

41. The owners of 2 Union Street paid Respondent in two installments of twenty-four thousand, two hundred dollars (\$24,200.00), and wrote “lead paint removal” in the “Memo” section of each check.

42. Respondent began working at 2 Union Street on April 8, 2019. The work was completed on or about June 11, 2019.

43. On September 10, 2019, EPA received a complaint from the homeowners regarding Respondent’s work involving lead-based paint at 2 Union Street.

44. Upon review of the information provided by the homeowners, EPA issued an Information Request Letter (“IRL”) in lieu of on-site inspection to Respondent on September 24, 2019, containing questions regarding Respondent’s compliance with the Abatement Rule in its work at 2 Union Street (“Abatement IRL”).

45. Respondent submitted a response on October 28, 2019 (“Abatement IRL Response”).

46. The Abatement IRL Response included a cover letter identifying the following supporting documentation as attachments:

- a. Certified abatement supervisor
- b. Occupant protection plan
- c. Certified abatement workers and description of work completed.
- d. Copies of contracts/orders by Clean Air Environmental Services, Inc.
- e. Proof of payment for services rendered.

- f. Copy of letter from homeowners
- g. Emails to and from homeowners[.]

47. Documentation provided as the above-listed items a, b, and c referenced the RRP Rule, and did not demonstrate compliance with the relevant provisions of the Abatement Rule, 40 C.F.R. §§ 745.227(e)(1), 745.227(e)(2), 745.227(e)(4)(ix), 745.227(e)(5), 745.227(e)(8), 745.227(e)(10), and the RRP Rule, 40 C.F.R. § 745.81(a)(2)(ii).

48. EPA issued a second IRL to Respondent on November 6, 2019, containing questions regarding Respondent's compliance with the RRP Rule ("RRP IRL") at 2 Union Street.

49. Respondent submitted a response to the second IRL, notarized via affidavit for completeness and accuracy, on December 18, 2019 ("RRP IRL Response").

50. In the RRP IRL Response, Respondent reported an annual gross revenue of two million, two hundred and eighty-one thousand, two hundred and fifty-six dollars and .56 cents (\$2,281,256.56) in 2018, and that it employed approximately thirty-five (35) employees.

51. In reply to an RRP IRL question seeking, in part, the "approximate square footage of painted surfaces disturbed (interior-square footage by room)," Respondent wrote: "The approx. Sqft is about [nine hundred and twenty-five] 925 of renovated surfaces."

52. Nine hundred and twenty-five (925) square feet constitutes over 26% of the total living area of 2 Union Street.

53. In the RRP IRL Response, Respondent submitted work logs kept for the duration of its work at 2 Union Street. The worklogs describe the daily work and the methods used onsite to eliminate the lead-based paint. The work logs included numerous references to abatement work performed, including the following:

- a. "Apply stripper to work area for removal of lead paint" (Work Logs Part 2, Page 2);
- b. "Applying chemical," "Picking up all drop clothes and hepa vacing (*sic*) and wet wiping flooring" (Work Logs Part 2, Page 5);
- c. "Continue remove lead paint from trim placing down drop clothes." (Work Logs Part 2, Page 8);

54. The work performed at 2 Union Street as described by Respondent in its Proposal to the owners of 2 Union Street, Abatement IRL Response, and its RRP IRL Response falls within the definition of abatement as defined by the Abatement Rule.

55. The work conducted by Respondent at 2 Union Street is abatement, subject to 40 C.F.R. Part 745, Subpart L.

56. Had Respondent been performing a Renovation covered by the RRP Rule, such a Renovation would have been performed in violation of the RRP Rule in at least the following ways:

- a. Respondent failed to obtain from the owner a written acknowledgment that the owner had received the Renovate Right pamphlet in violation of 40 C.F.R. § 745.84(a)(1)(i).
- b. Respondent failed to retain all records necessary to demonstrate compliance with the residential property renovation requirements for a period of 3 years following completion of renovation activities in violation of 40 C.F.R. § 745.86.
- c. As a firm that performs renovations for compensation, Respondent failed to obtain initial certification from EPA, in violation of 40 C.F.R. § 745.89(a).
- d. Respondent failed to ensure that all individuals performing renovation activities were trained by a certified renovator in accordance with 40 C.F.R. § 745.90, in violation of 40 C.F.R. § 745.89(d)(1).

57. Based on Respondent's Abatement IRL Response and RRP IRL Response, and the information originally received on January 17, 2023, EPA sent Respondent a Notice of Potential Violations and Opportunity to Confer ("NOPVOC") letter, referencing six potential Abatement Rule violations and one potential RRP Rule violation, and extending an opportunity to meet.

58. EPA and Respondent were unable to resolve this matter through informal settlement negotiations.

ABATEMENT RULE VIOLATIONS

COUNT 1

Individual Certification: Failure to ensure that abatement is conducted by a person certified by EPA

59. Complainant realleges and incorporates by reference all preceding allegations as though fully set forth herein.

60. Pursuant to 40 C.F.R. § 745.227(e)(1), an abatement shall be conducted only by an individual certified by EPA, and if conducted, shall be conducted according to the prescribed procedures.

61. The work logs included in Respondent's RRP IRL Response identified forty-one (41) individuals who signed in to perform lead-paint removal work at 2 Union Street.

62. EPA staff conducted a thorough review of EPA's Federal Lead-Based Paint Program ("FLPP") database for each of the forty-one (41) individuals who signed in to perform abatement work at 2 Union Street to determine if any were EPA-certified to perform abatement work.

63. None of the forty-one (41) individuals who signed in to perform abatement work at 2 Union Street were EPA-certified to perform abatement work.

64. In response to the IRLs, Respondent provided no records establishing that any individuals conducting abatement work at 2 Union Street were certified by EPA to perform abatement work.¹

65. Respondent's failure or refusal to ensure compliance with 40 C.F.R. § 745.227(e)(1) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

COUNT 2

Supervisor Certification: Failure to ensure that an abatement project has a certified supervisor who is onsite

66. Complainant realleges and incorporates by reference all preceding allegations as though fully set forth herein.

67. In response to the Abatement and RRP IRLs, Respondent provided no records establishing that the individuals supervising abatement work at 2 Union Street were certified as abatement supervisors by EPA².

68. Respondent's failure or refusal to ensure compliance with 40 C.F.R. § 745.227(e)(2) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

COUNT 3

Notification: Failure to notify EPA before engaging in abatement work

69. Complainant realleges and incorporates by reference all preceding allegations as though fully set forth herein.

70. Pursuant to 40 C.F.R. § 745.227(e)(4)(ix), no firm or individual shall engage in lead-based paint abatement activities, as defined in § 745.223, prior to notifying EPA of such activities, except in the case of an EBL determination or an abatement order from an appropriate authority, in which case notification must be made at the earliest opportunity.

71. EPA did not receive notification from Respondent prior to the commencement of the abatement work at 2 Union Street.

72. The Abatement IRL, in Question 3, requested a copy of the pre-abatement notification submitted to EPA.

¹ Respondent provided records establishing that a few of the workers hired to perform the work were EPA Certified Renovators pursuant to the RRP Rule. 40 C.F.R. § 745.90.

² Respondent provided a record establishing that the supervisor of the work conducted at 2 Union Street was an EPA Certified Renovator pursuant to the RRP Rule. 40 C.F.R. § 745.90.

73. Respondent did not provide any records establishing that notification had been made or demonstrating attempted notification.

74. Respondent engaged in lead-based paint abatement activities, as defined in § 745.223, at 2 Union Street without ever notifying EPA of such activities.

75. Respondent's failure or refusal to comply with 40 C.F.R. § 745.227(e)(4)(ix) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

COUNT 4

Occupant Protection Plan: Failure to develop a written occupant protection plan in accordance with the regulatory requirements

76. Complainant realleges and incorporates by reference all preceding allegations as though fully set forth herein.

77. Pursuant to 40 C.F.R. § 745.227(e)(5), a written occupant protection plan shall be developed for all abatement projects. The plan shall be unique to the residential dwelling, developed prior to the abatement, and shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards. The occupant protection plan shall be prepared by a certified supervisor or project designer.

78. The Abatement IRL, in Question 2, requested a copy of the occupant protection plan.

79. In response to the Abatement IRL, Respondent provided a document, possibly to answer Question 2, entitled "RRP Procedures, Renovation of Lead based Paint," that was denoted as being a "LEAD Safe Work Plan." The document included a description of "Preparation Activities," "Removal Activities," and "Clearance and tear down."

80. Respondent did not have a certified supervisor or project designer on staff to prepare an occupant protection plan for 2 Union Street.

81. Respondent's "RRP Procedures, Renovation of Lead based Paint" document is therefore not an occupant protection plan within the meaning of the Abatement Rule.

82. Respondent's failure or refusal to ensure compliance with 40 C.F.R. § 745.227(e)(5) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

COUNT 5

**Post-Abatement Clearance: Failure to perform
post-abatement clearance procedures in accordance with regulatory requirements**

83. Complainant realleges and incorporates by reference all preceding allegations as though fully set forth herein.

84. Pursuant to 40 C.F.R. § 745.227(e)(8), post-abatement clearance procedures shall be performed by a certified inspector or risk assessor, and include a visual inspection, any post-abatement cleanup required, and clearance sampling for lead in dust using approved techniques and methodologies.

85. The Abatement IRL, in Question 8, requested copies of any information relating to lead paint in the property, including clearance testing results.

86. Respondent has not provided any records documenting the use of a certified inspector or risk assessor to conduct clearance sampling for lead.

87. In Respondent's Abatement IRL Response, Respondent indicated that the homeowners "decided not to obtain a third party monitor or have sampling post and prior to project."

88. Post-Abatement Clearance requirements are not optional under the Abatement Rule.

89. Respondent's failure or refusal to ensure compliance with 40 C.F.R. § 745.227(e)(8) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

COUNT 6

Abatement Report: Failure to prepare an abatement report

90. Complainant realleges and incorporates by reference all preceding allegations as though fully set forth herein.

91. Pursuant to 40 C.F.R. § 745.227(e)(10) a certified supervisor or project designer shall prepare an abatement report that includes the information required by this paragraph, including, but not limited to: start and completion dates of abatement; the name and address of each certified form and each supervisor assigned to the abatement; the occupant protection plan; the name, address and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing; the results of clearance testing and the name of each recognized laboratory that conducted the analyses; and a detailed written description of the abatement.

92. The Abatement IRL, in Question 9, requested a copy of the abatement report.

93. In response to Question 9 of the Abatement IRL, Respondent has not provided any

records of the preparation of an abatement report, or any abatement report as a record.

94. No abatement report was prepared for the work conducted at 2 Union Street.

95. Respondent's failure or refusal to ensure compliance with 40 C.F.R. § 745.227(e)(10) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

RRP RULE VIOLATION

COUNT 7

Firm Certification: Failure of a firm that claims to perform renovations to obtain certification from EPA

96. Complainant realleges and incorporates by reference all preceding allegations as though fully set forth herein.

97. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii), no firm may offer or claim to perform renovations without certification from EPA under § 745.89 in target housing.

98. Respondent was not certified by EPA as a Firm pursuant to the RRP Rule prior to April 29, 2021.

99. Respondent first became certified by EPA (Certification # NAT-F153170-1) to conduct lead-based paint renovation, repair, and painting activities pursuant to 40 C.F.R. § 745.89 on April 29, 2021, and that RRP certification expires on May 13, 2026.

100. Nonetheless, Respondent offered to perform and claimed to perform renovations within the meaning of the RRP Rule before, during, and after its work at 2 Union Street in 2019.

101. In its proposals to the 2 Union Street homeowners, Respondent offered to scrap, patch, and paint lead-based paint on trim throughout the home for compensation of twenty-five thousand, four hundred and fifty dollars (\$25,450.00).

102. At all relevant times, Respondent advertised on Facebook that it performs "asbestos abatement, lead renovations, mold remediation, and demolition" work for its clients.

103. In its RRP IRL Response, Respondent used the phrase "renovate their new home" to describe the work it said the owners of 2 Union Street wanted done, and also enclosed "Certified Renovator credentials" for individuals working on and supervising the work performed.

104. Respondent employed several EPA-certified renovators eligible to perform RRP work at the time of the work performed at 2 Union Street.

105. In its RRP IRL Response, Respondent submitted a document entitled “Notice to All Building Occupants of Lead Paint RRP Project” prepared for the 2 Union Street.

106. Respondent’s failure or refusal to comply with 40 C.F.R. § 745.81(a)(2)(ii) constitutes a violation of § 409 of TSCA, 15 U.S.C. § 2689, for which a civil penalty may be assessed.

PROPOSED CIVIL PENALTY

For purposes of determining the amount of any penalty to be assessed, Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), provides, “In determining the amount of a civil penalty, the Administrator [of EPA] shall take into account the nature, circumstances, extent, and gravity of the violation or 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 such other matters as justice may require.” This Complaint does not specify a proposed penalty. EPA will do so pursuant to 40 C.F.R. § 22.19(a)(4), which provides:

If the proceeding is for the assessment of a penalty and complainant has not specified a proposed penalty, each party shall include in its prehearing information exchange all factual information it considers relevant to the assessment of a penalty. Within fifteen (15) days after respondent files its prehearing information exchange, complainant shall file a document specifying a proposed penalty and explaining how the proposed penalty was calculated in accordance with any criteria set forth in [TSCA].

At such time as it proposes a specified penalty for the violations alleged in this Complaint, EPA will consider the above-listed statutory factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), and such consideration will include any credible documentary information Respondent has introduced into the litigation or has otherwise provided EPA for settlement purposes. In developing a specified penalty for each of the set of violations alleged in this Complaint, EPA will utilize the guidance set forth in TSCA Section 16(a)(2)(B), 15 U.S.C. § 2615(a)(2)(B), and 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* (“LBP Consolidated ERPP”). The LBP Consolidated ERPP sets forth a general penalty assessment policy for violations of Section 409 of TSCA, including violations of the Abatement Rule and the RRP Rule. The LBP Consolidated ERPP provides a rational, consistent, and equitable calculation methodology for applying the statutory factors to particular cases.

As set forth in the above allegations, at the time of TSCA’s passage in 1976, twenty-five thousand dollars (\$25,000) represented the maximum amount per violation EPA could seek and obtain for any violation of Section 15 of TSCA, 15 U.S.C. § 2614; that amount has been increased to forty-eight thousand, five hundred and twelve dollars (\$48,512) for any such violation occurring after November 2, 2015 and for which a penalty has been assessed after December 27, 2023. [88 Fed. Reg. 89311](#) (Dec. 27, 2023). Accordingly, this forty-eight thousand, five hundred and twelve dollars (\$48,512) amount constitutes the maximum penalty authorized under the Inflation Adjustment Act for each of the aforementioned alleged violations. See 40 C.F.R. Part 19.

Complainant thus sets forth the following:

Count 1: TSCA Section 409: Failure to ensure abatement is conducted by a person certified by EPA

Requirement: The applicable requirements regarding the relevant provisions have been alleged above (40 C.F.R. § 745.227(e)(1)).

Violation: In Respondent's RRP IRL response, it provided a list of workers assigned to the job and a description of the abatement work they performed. None of the workers identified hold credentials as EPA-certified lead abatement workers.

Number of Violations: One violation

Severity of Violation: Minor (no children living in the house)

Statutory Authority for Penalty: 15 U.S.C. § 2689

Count 2: TSCA Section 409: Failure to ensure that an abatement project has a certified supervisor

Requirement: The applicable requirements regarding the relevant provisions have been alleged above (40 C.F.R. § 745.227(e)(2)).

Violation: Respondent designated Jason Thompson as the onsite supervisor at 2 Union Street and submitted Mr. Thompson's certification as an EPA-certified RRP Renovator in its Abatement IRL Response. Mr. Thompson does not hold credentials as an EPA-certified Abatement Supervisor.

Number of Violations: One violation

Severity of Violation: Minor

Statutory Authority for Penalty: 15 U.S.C. § 2689

Count 3: TSCA Section 409: Failure to notify EPA before engaging in abatement work

Requirement: The applicable requirements regarding the relevant provisions have been alleged above (40 C.F.R. § 745.227(e)(4)(ix)).

Violation: Respondent did not file a notification for this abatement.

Number of Violations: One violation

Severity of Violation: Minor

Statutory Authority for Penalty: 15 U.S.C. § 2689

Count 4: TSCA Section 409: Failure to develop a written occupant protection plan in accordance with the regulatory requirements

Requirement: The applicable requirements regarding the relevant provisions have been alleged above (40 C.F.R. § 745.227(e)(5)).

Violation: An occupant protection plan prepared by a certified abatement supervisor was not prepared for the abatement at 2 Union Street.

Number of Violations: One violation

Severity of Violation: Minor

Statutory Authority for Penalty: 15 U.S.C. § 2689

Count 5: TSCA Section 409: Failure to perform post-abatement clearance procedures in accordance with regulatory requirements

Requirement: The applicable requirements regarding the relevant provisions have been alleged above (40 C.F.R. § 745.227(e)(8)).

Violation: No post-clearance verification was conducted for the abatement work at 2 Union Street.

Number of Violations: One violation

Severity of Violation: Minor

Statutory Authority for Penalty: 15 U.S.C. § 2689

Count 6: TSCA Section 409: Failure to prepare an abatement report

Requirement: The applicable requirements regarding the relevant provisions have been alleged above (40 C.F.R. § 227(e)(10)).

Violation: No abatement report was prepared for the abatement work conducted at 2 Union Street.

Number of Violations: One violation

Severity of Violation: Minor

Statutory Authority for Penalty: 15 U.S.C. § 2689

Count 7: TSCA Section 409: Failure of a firm that claims to perform renovations to obtain certification from EPA

Requirement: The applicable requirements regarding the relevant provisions have been alleged above (40 C.F.R. § 745.81(a)(2)(ii)).

Violation: Respondent, an EPA-certified Abatement firm, offered to perform Renovations for compensation prior to receiving EPA-certification as a Renovation firm.

Number of Violations: One violation

Severity of Violation: Significant (based on size of firm—thirty-five (35) employees)

Statutory Authority for Penalty: 15 U.S.C. § 2689

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation were originally set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS (“Consolidated Rules of Practice”), and are codified at 40 C.F.R. Part 22. These rules were recently amended to simplify the administrative processing of cases by expanding the availability of electronic filing and service procedures and eliminating inconsistencies. 82 Fed. Reg. 2230 (January 9, 2017). These amendments became effective on May 22, 2017, and apply to all new case filings after that date. A copy of the current Consolidated Rules of Practice, incorporating these amendments, accompanies this Complaint.

A. Answering the Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate, or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

The attached Standing Order from the Regional Judicial Officer of U.S. Environmental Protection Agency, Region 2, dated August 3, 2020, authorizes electronic service of certain Part 22 documents, including the Respondent's Answer to this Complaint (Attachment A). Respondent may therefore serve

its Answer upon the Regional Hearing Clerk electronically to the following address:

Maples.Karen@epa.gov

A copy of Respondent's Answer, including any request for hearing, must also be sent to Complainant. 40 C.F.R. § 22.15(a). Complainant has designated Assistant Regional Counsel (ARC) Suzanne Englot to receive service on her behalf. Pursuant to the attached Consent from Complainant, dated September 30, 2022 (Attachment B), Respondent may send documents filed in this matter to ARC Englot electronically: Englot.Suzanne@epa.gov.

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding), and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise facts in the Answer that constitute or that might constitute the grounds of their defense may preclude Respondent from raising such facts at a subsequent stage in this proceeding, and/or from having such facts admitted into evidence at a hearing.

B. Opportunity to Request a Hearing

If requested by Respondent in its Answer, a hearing may be held upon the issues raised by the Complaint and Answer. 40 C.F.R. § 22.15(c); *see generally* Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22. *See* Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A) (stating, in part, that "[a] civil penalty for a violation of section 2614 ... of this title [15 U.S.C. § 2614] shall be assessed by the Administrator by an order made on the record after opportunity ... for a hearing in accordance with section 554 of Title 5 [5 U.S.C. § 554].").

If Respondent fails to request a hearing, such failure may preclude Respondent from obtaining judicial review of an adverse EPA order. *See* 15 U.S.C. § 2615(a)(3) (stating, in part, that "[a]ny person who requested in accordance with paragraph (2)(A) [15 U.S.C. § 2615(a)(2)(A)] a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business.").

C. Failure to Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely Answer to the Complaint (i.e., in accordance with the thirty (30) day period set forth in 40 C.F.R. § 22.15(a)), Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for failure to timely file an Answer to the Complaint, any order issued thereafter shall be issued pursuant to 40 C.F.R. § 22.17(c). Any 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 pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

D. Filing of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent has filed an Answer(s) should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk. Respondent should register to use the EPA e-filing system: https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf/HomePage?ReadForm

E. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the EPA's Environmental Appeals Board ("EAB") (see 40 C.F.R. § 1.25(e)) pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the EPA EAB, Respondent must do so "within thirty (30) days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "5 days shall be added to the time allowed by these [rules] for the filing of a responsive document." Note that the forty-five (45) day period provided for in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's

calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business, and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent or any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Suzanne Englot
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
(212) 637-3107
Englot.Suzanne@epa.gov

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entry into a settlement through the signing of such Consent Agreement and its compliance with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy, or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements and to maintain such compliance.

Signed:

Christine Ash, Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007-1866

To: Adam Bido
Clean Air Environmental Services, Inc.
215 ½ North Perry St.
Johnstown, New York 12095
ABido@cleanaires.com

Attachment A: Standing Order issued by the Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, dated August 3, 2020

Attachment B: Consent from Complainant, dated May 29, 2024