

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

<p>In the matter of:</p> <p>RFN Enterprise, Inc. 428 Foxridge Drive Leesburg, VA 20175</p> <p>Respondent,</p> <p>5338 Reisterstown Rd. Baltimore, MD 21215</p> <p>Target Housing.</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>U.S. EPA Docket No. TSCA-03-2017-0106</p> <p>Proceeding Under Section 16(a) of the Toxic Substances Control Act 15 U.S.C. § 2615(a).</p>
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MOTION FOR DEFAULT ORDER

I. PROCEDURAL HISTORY AND LEGAL STANDARD

On March 10, 2017, the Director of the Land and Chemicals Division, Region III, of the U.S. Environmental Protection Agency (“Complainant”) issued an Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) pursuant to Section 16(a) of the Toxic Substances Control Act (collectively, “TSCA”), 15 U.S.C. § 2615(a), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits* (“*Rules of Practice*”), 40 C.F.R. Part 22, to RFN Enterprise, Inc. (“Respondent”). The Complaint alleged that Respondent violated certain of the federal regulations set forth at 40 C.F.R. Part 745, Subpart E, and proposed the assessment of a penalty of \$38,520 for such violations. Exhibit A to this Motion is a copy of the Complaint.

Where a respondent is a domestic corporation, proper service can be made by serving the complaint on an officer of the corporation. 40 C.F.R. § 22.5(b)(1)(ii)(A). As alleged in the Complaint at ¶¶ 19 and 37, the Respondent is a domestic corporation. and Francis Nataren is an officer of the Respondent. Complainant served a copy of the filed Complaint on the Respondent

on March 22, 2017, via the United States Postal Service (“USPS”). The return receipt for delivery of the Complaint bears a signature that, according to the line below it for the recipient’s printed name, is Frances Nataren. Therefore, the return receipt, attached as Exhibit B, documents that the Complaint was properly served by USPS¹ and provides written verification of delivery on a domestic corporation’s officer. Thus, the record reflects that the Complainant properly served the Respondent with a copy of the Complaint in accordance with Section 22.5(b) of the *Rules of Practice*, 40 C.F.R. § 22.5(b).

Section 22.15 of the *Rules of Practice* requires that a written answer to a complaint be filed with the Regional Hearing Clerk within 30 days after service of such complaint. 40 C.F.R. § 22.15(a). In this case, both the Complaint and the accompanying cover letter (attached as Exhibit C hereto) stated that Respondent’s failure to file a written answer within 30 days of receipt of the Complaint would constitute an admission of all facts alleged in the Complaint and a waiver of Respondent’s right to hearing and result in the possible issuance of a Default Order imposing the penalty. Specifically, the Complaint stated:

The Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint or the appropriateness of the proposed penalty. To request a hearing, Respondent must file a written Answer to the Complaint, within thirty (30) days of receipt of this Complaint, with [the Regional Hearing Clerk]. Complaint ¶ 99.

The Complaint further stated:

Failure of the Respondent to file a written Answer may result in the filing of a Motion for a Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings. Default shall constitute, for the purposes of this proceeding only, an admission of all facts alleged in this Complaint and a waiver of Respondent’s right to contest such factual allegations. Complaint ¶ 101 (Emph. omitted.)

¹ On May 4, 2017, the Complainant filed the return receipt as Proof of Service with the Regional Hearing Clerk in accordance with 40 C.F.R. § 22.5(b)(1)(iii). Counsel for the Complainant filed the Proof of Service with the Regional Hearing Clerk shortly after receiving it. Counsel has inquired and has been unable to determine why there was such an extended delay between service of the Complaint and delivery of the return receipt to him.

The cover letter stated:

You must file an Answer to this Complaint within thirty (30) days of its receipt. The Answer must specifically respond to each of the allegations in the Complaint. Your failure to respond to this Complaint by specific Answer within thirty (30) days of your receipt of the Complaint will constitute an admission of the Complaint's allegations. If you fail to file an Answer, EPA will file a Motion for a Default Order. This could result in the issuance of a Default Order imposing the Complaint's proposed penalty without further proceedings. Exhibit C, ¶ 3. (Emph. omitted.)

To date, notwithstanding these warnings, the Respondent has not filed an Answer with either the Regional Hearing Clerk or Complainant.²

Rule 17 of the *Rules of Practice* states:

(a) *Default.* A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint 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. . . .

(b) *Motion for default.* A motion for default may seek resolution of all or part of the proceeding. Where the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested.

(c) *Default order.* When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. . . . The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act. . . .

40 C.F.R. §§ 22.17(a)-(c).

In accordance with Sections 22.16(a) and 22.17(b) of the *Rules of Practice*, 40 C.F.R. §§ 22.16(a) and 22.17(b), the Complainant hereby moves for a Default Order resolving the entire proceeding captioned above by finding the Respondent liable for the nine violations alleged in the Complaint and assessing a total civil penalty of \$38,520 for such violations. The legal and factual grounds for the requested relief follow below.

² Although the *Rules of Practice* do not recognize a verbal acknowledgement as evidence of Proof of Service, as discussed below, Frances Nataren contacted counsel for the Complainant about the Complaint on March 30, 2017, and discussed the Complaint with counsel.

II. STATUTORY AND REGULATORY BACKGROUND

Lead poisoning can cause numerous deleterious health consequences, including “intelligence quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity and behavior problems; in severe cases it may lead to seizures, coma and death.” EPA’s December 2007 *Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy* (“2007 Section 1018 ERP”) 1. In the early 1990s, data indicated that approximately 890,000 American children had blood-lead levels (“BLLs”) that exceeded 10 micrograms/deciliter (“µg/dL”) – the level of concern established by the Centers for Disease Control and Prevention. *Id.* As many as 4 million American homes had lead-based paint and/or lead-based paint hazards that endangered the health of American children. *Id.*

Congress enacted the Residential Lead-Based Paint Hazard Reduction Act of 1992, which amended TSCA, to address the concerns about the prevalence of lead poisoning among American children and the resulting serious health effects.³ *Id.* Section 1021 of Residential Lead-Based Paint Hazard Reduction Act of 1992 amended TSCA by adding Title IV, “Lead Exposure Reduction,” Sections 401-412 of TSCA, 15 U.S.C. §§ 2681- 2692.

In response to the problems presented by lead paint, EPA took several regulatory actions. One action EPA took occurred in 1998. Pursuant to Section 406(b) of TSCA, 15 U.S.C. § 2686(b), EPA promulgated the Pre-Renovation Education (“PRE”) Rule. 63 Fed. Reg. 29,907 (June 1, 1998) (codified at 40 C.F.R. Part 745, Subpart E). The PRE Rule requires, *inter alia*, that “persons who perform for compensation a renovation of pre-1978 housing (“target housing”)

³ See also Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program, 75 Fed. Reg. 25,037, 25,039-41 (May 6, 2010); Lead; Renovation, Repair, and Painting Program; 73 Fed. Reg. 21,691, 21,693-21,694 (April 22, 2008); and Lead; Renovation, Repair, and Painting Program, 71 Fed. Reg. 1587, 1590 (Jan. 10, 2006).

provide a lead hazard information pamphlet to the owner and occupant prior to commencing the renovation.” EPA’s August 2010 *Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (Appendices A and B revised April 2013) (“*ERPP*”) (attached as Exhibit D hereto) 3.

Then in 2008, EPA promulgated the Renovation, Repair, and Painting (“RRP”) Rule authorized pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3). Among other things, the RRP Rule, 73 Fed. Reg. 21,691 (April 22, 2008) (codified at 40 C.F.R. Part 745, Subpart E), amended the PRE Rule. The RRP Rule prescribes “procedures and requirements for the accreditation of training programs, certification of individuals and firms, [and] work practice standards for renovation, repair and painting activities in target housing and child-occupied facilities . . .” *ERPP* 3.

III. REQUESTED RELIEF

The law and facts regarding Respondent’s violations of TSCA and 40 C.F.R. Part 745, Subpart E, are set forth in detail in the Complaint and incorporated herein by reference. As described in the Complaint, Respondent failed to comply with a number of regulatory requirements of the RRP and PRE Rules⁴ in connection with its renovation of Target Housing located at 5338 Reisterstown Road, Baltimore, MD 21215 (“Target Facility”).

As a result of its default, Respondent has admitted all the facts alleged in the Complaint supporting the alleged violations and waived its right to contest such factual allegations. 40 C.F.R. § 22.17(a). Accordingly, based on the factual allegations deemed admitted, the Regional

⁴ The Complaint alleges violations of the RRP Rule (Counts I-VIII) and PRE Rule (Count IX), but cites only the RRP Rule by name. *See* Complaint ¶ 6.

Judicial and Presiding Officer can conclude that Respondent violated Section 409 of TSCA, 15 U.S.C. § 2689, at the Target Facility by failing to:

- Count I Obtain its initial firm certification from EPA under 40 C.F.R. § 745.89 prior to performing a renovation at target housing as required by 40 C.F.R. § 745.81(a)(2)(ii).
- Count II Retain all records necessary to demonstrate compliance with Subpart E of 40 C.F.R. Part 745 for a period of three years following completion of the renovation of the Target Facility as required by 40 C.F.R. § 745.86(a).
- Count III Post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside the work area as required by 40 C.F.R. § 745.85(a)(1).
- Count IV Remove all objects from the work area or cover them with plastic sheeting or other impermeable material as required by 40 C.F.R. § 745.85(a)(2)(i)(A).
- Count V Cover all ducts with taped-down plastic sheeting or other impermeable materials as required by 40 C.F.R. § 745.85(a)(2)(i)(B).
- Count VI Close windows and doors in the work area and cover them with plastic sheeting or other impermeable material as required by 40 C.F.R. § 745.85(a)(2)(i)(C).
- Count VII Cover the floor surface with taped-down plastic sheeting or other impermeable material within the work area as required by 40 C.F.R. § 745.85(a)(2)(i)(D).
- Count VIII Contain waste from renovation activities in order to prevent the release of dust and debris before the Respondent removed the waste from the work area for storage or disposal as required by 40 C.F.R. § 745.85(a)(4)(i).
- Count IX Obtain a Written Acknowledgement of Provision of EPA's Lead Hazard Information Pamphlet or Written Certification of Mailing the Pamphlet to the owner of target housing prior to the renovation of such target housing as required by 40 C.F.R. § 745.84(a)(1).

Complainant requests that the Regional Judicial and Presiding Officer issue a Default Order finding Respondent liable for the violations of 40 C.F.R. Part 745, Subpart E, and Section

409 of TSCA, 15 U.S.C. § 2689, as alleged in the Complaint and reiterated above. Further, Complainant requests that the Regional Judicial and Presiding Officer issue a Default Order assessing a civil penalty of \$38,520 against Respondent for such violations. As explained below, the requested relief proposed in the Complaint and herein is clearly consistent with the record of this proceeding and TSCA, the statute authorizing this proceeding, warranting the imposition of the relief requested pursuant to Section 22.17(c) of the *Rules of Practice*, 40 C.F.R. § 22.17(c). An explanation of how Complainant determined the amount of the proposed civil penalty and the legal authority for the same follows.

As set forth in the Complaint, pursuant to Section 409 of TSCA, 15 U.S.C. § 2689, it is unlawful for any person to fail or refuse to comply with a provision of Subchapter IV, Sections 401 through 412 of TSCA, 15 U.S.C. §§ 2681 through 2692, or any rule issued thereunder. Any person who violates a provision of Section 409 of TSCA is liable to the United States for a civil penalty in an amount not to exceed \$37,500 for each such violation that occurred on or after January 13, 2009.⁵ Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), as amended.

In determining the amount of any civil penalty to be assessed for any such violation, EPA is required to 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 (“statutory factors”). Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B).

⁵ In 2008, EPA promulgated a Civil Monetary Penalty Inflation Adjustment Rule pursuant to the Debt Collection Improvement Act of 1996, increasing the statutory maximum penalty under Section 16 of TSCA to \$37,500. 73 Fed. Reg. 75,340-75,346 (Dec. 11, 2008). On June 22, 2016, TSCA’s statutory maximum was amended to \$37,500 by Section 12 of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Pub. L. No. 114-182).

As set forth in detail in the Declaration of Craig Yussen (“Yussen Decl.”), attached hereto as Exhibit D, in determining the penalty proposed for Respondent’s violations, Mr. Yussen, a chemical engineer and compliance officer with EPA, took into account the particular facts and circumstances of this case with specific reference to TSCA’s “statutory factors,” consistent with applicable EPA guidance in the *ERPP* (Exhibit D). The *ERPP* provides a rational, consistent and equitable methodology for applying the statutory factors to the specific facts and circumstances of this case, following the general framework described in EPA’s 1980 “*Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act.*” *ERPP* 8.

The penalty calculation under the *ERPP* considers the nature, circumstance and extent level of the violation. The “nature” -- the essential character -- of the violation is either “chemical control,” “control-associated data gathering,” or “hazard assessment.” *Id.* 14. The nature of the violation has a direct effect on the measure used to determine the “circumstance” and “extent” categories of the *ERPP*. *Id.* 14-15. The “circumstance” level of a violation is characterized as *high*, *medium* or *low* (on a continuum from a high of “1a” to a low of “6b”), commensurate with such violation’s *probability* of harm. *Id.* 15-16. Appendix A of the *ERPP* sets forth the circumstance level for particular violations. *Id.* Appendix A. The extent level of a violation may be *major*, *significant* or *minor*, representing the degree, range and scope of such violation’s *potential* for harm. *Id.* 16-17.

As explained by Mr. Yussen, the extent level for each of the Respondent’s violations cited in the Complaint is *minor*. This is because, at the time of the renovations, no children under the age of eighteen resided in or were present in the premises as confirmed by the owner of the target housing. Yussen Decl. ¶21. Accordingly, the potential for harm of each of the nine

violations was low. This warrants an extent level of *minor* under the *ERPP*. Yussen Decl. ¶¶ 21, 25, 29, 33, 37, 41, 45, 49, and 53. Additionally, consistent with the *ERPP*, this extent level also reflects Respondent's small size. *ERPP* 22 and Appendix A A-3, n.49.

As to the circumstance level for each violation, Appendix A⁶ of the *ERPP* characterizes violations of 40 C.F.R. § 745.81(a)(2)(ii) (Count I) -- chemical control in nature -- as a Circumstance Level of 3a because failure to obtain an initial firm certification poses a medium probability of harm or impact to human health and the environment. Yussen Decl. ¶ 20; *ERPP* Appendix A, A-3. (Exhibit F to this Motion sets out the circumstance for each Count in tabular form.) Violations of 40 C.F.R. § 745.86 (a) (Count II) -- control-associated data gathering in nature -- are characterized as a Circumstance Level of 6a by the *ERPP* because failing to retain records poses a low probability of harm or impact to human health and the environment. Yussen Decl. ¶ 24; Appendix A, A-3. The Respondent's failure to post warning signs defining the work area and notify occupants to remain outside the area, as required by 40 C.F.R. § 745.85(a)(1) (Count III) -- chemical control in nature -- presents a high probability of harm or impact to human health and warrants a circumstance level of 1b. Yussen Decl. ¶ 28; Appendix A, A-8.

The Respondent also violated five work practice rules that each posed a high probability of harm for which the *ERPP* assigns a circumstance level of 2a. Yussen Decl. ¶¶ 32, 36, 40, 44

⁶ EPA's 2016 Civil Monetary Penalty Inflation Adjustment Rule does not apply to the violations at issue as each occurred before November 2, 2015. See Memorandum Regarding Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation, Cynthia Giles (July 27, 2016) <https://www.epa.gov/sites/production/files/2017-01/documents/finalpenaltyinflationguidance.pdf>, 2. Likewise, EPA's 2013 Civil Monetary Penalty Inflation Adjustment Rule does not apply because each violation occurred before December 7, 2013. See Memorandum Regarding Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation, Cynthia Giles (Dec. 6, 2013) <https://www.epa.gov/sites/production/files/2014-01/documents/guidancetoamendepapenaltypolicyforinflation.pdf>, 6, 7.

and 48. These were violations of the requirements to remove all objects from the work area or cover them with plastic sheeting or other impermeable material (Count IV - 40 C.F.R. § 45.85(a)(2)(i)(A)), cover all ducts with taped-down plastic sheeting or other impermeable materials (Count V - 40 C.F.R. § 745.85(a)(2)(i)(B)), close windows and doors in the work area and cover them with plastic sheeting or other impermeable material (Count VI - 40 C.F.R. § 745.85(a)(2)(i)(C)), cover the floor surface with taped-down plastic sheeting or other impermeable material within the work area, (Count VII - 40 C.F.R. § 745.85(a)(2)(i)(D)), and contain waste from renovation activities in order to prevent the release of dust and debris before the Respondent removed the waste from the work area for storage or disposal (Count VIII - 40 C.F.R. § 745.85(a)(4)(i)). The nature of each of these violations is chemical control. Yussen Decl. ¶¶ 32, 36, 40, 44 and 48; *ERPP* Appendix A, A-5.

Finally, EPA characterizes violations of 40 C.F.R. § 745.84(a)(1), failure to obtain a written acknowledgement of provision of EPA's Lead Hazard Information Pamphlet or Written Certification of Mailing the Pamphlet to the owner of target housing prior to the renovation of such target housing, as hazard assessment in nature (Count IX). In the *ERPP*, EPA assigns a Circumstance Level of 4b to this type of violation because it poses a medium probability of harm or impact to human health and the environment. Yussen Decl. ¶ 52; Appendix A, A-2.

In order to determine the unadjusted gravity-based penalty for each violation, Mr. Yussen utilized the cells that correspond to the applicable row and column (for circumstance level and extent level, respectively,) of the "Gravity-Based Penalty Matrix for PRE, RRP & LBP Activities Rules" for violations that occurred after January 12, 2009 ("GBP Matrix"), included in Appendix B of the *ERPP* (B-2). Yussen Decl. ¶ 9. For example, because the Count I violation is deemed Circumstance Level 3a and a *minor* Extent Level, the intersection of the applicable row and

column on the GBP Matrix (B-2) results in a gravity-based penalty of \$4,500.00 for the violation. Yussen Decl. ¶¶ 20-22. As another example, the intersection of the applicable row and column on the GBP Matrix (B-2) for a violation deemed Circumstance Level 6a and a Minor Extent Level yields a gravity-based penalty of \$600.00 for Count II. Yussen Decl. ¶ 24-26. Mr. Yussen has used the GBP Matrix for all the other violations and calculated a penalty for each of them. Yussen Decl. ¶¶ 28-30, 32-34, 36-38, 40-42, 44-46, 48-50 and 52-54. The table in Exhibit F shows each violation and the calculated penalty based upon the GBP Matrix.

As explained by Mr. Yussen in paragraph 56 of his Declaration, Complainant did not make any upward or downward adjustments to the penalty as allowed under the *ERPP*. At the time of filing of the Complaint, Complainant was not aware of any past violations of the RRP Rule or PRE Rule or of other circumstances from which to conclude that Respondent's level of culpability was other than negligent. Likewise, at the time of filing of the Complaint, Complainant had no basis on which to adjust the penalty to account for the factor of "such other matters as justice may require." Mr. Yussen also determined that Respondent did not incur any significant economic benefit as a result of its non-compliance. Finally, as Mr. Yussen attested, Complainant had inadequate information to properly assess either the ability of Respondent to pay the penalty⁷ or the effect of any such penalty on Respondent's ability to continue to do business. Yussen Decl. ¶ 56.

After the Complainant sent the Complaint to the Respondent, counsel for the Complainant received a call from Frances Nataren on March 30, 2017. During the course of the call, Ms. Nataren represented to Complainant's counsel that the Respondent could not afford the

⁷ The *ERPP* notes that "[e]ach financial analysis of a respondent's ability to pay should assume an ability to pay at least a small penalty to acknowledge and reinforce the respondent's obligations to comply with the regulatory requirements cited as violations in the civil administrative complaint." *ERPP* at 22, n.31 (citation omitted).

penalty proposed in the Complaint. In response to the call and the Respondent's claim of inability to pay, on April 6, 2017, and May 4, 2017, Complainant's counsel sent an email messages to the Respondent asking for financial information that could document the Respondent's claim of financial hardship. Exhibit G. In response, the Respondent has not supplied any financial information to the Complainant. Yussen Decl. ¶ 55.

Complainant urges the Regional Judicial and Presiding Officer to consider and conclude that, by failing to answer and therefore defaulting, Respondent has waived any objection to the penalty based on any considerations of its ability to pay/continue to do business. *See, In re New Waterbury, Ltd.*, 5 E.A.D. 529, 542 (EAB 1994) (“[W]here a respondent does not raise its ability to pay as an issue in its answer . . . [Complainant] may properly argue and the presiding officer may conclude that any objection to the penalty based upon ability to pay has been waived.”); *accord, In re Spitzer Great Lakes Ltd., Co.*, 9 E.A.D. 302, 319-21 (EAB 2000).

Alternatively, the Regional Judicial and Presiding Officer could presume that Respondent is able to pay/continue to do business given the lack and/or insufficiency of information in the official record. EPA's Environmental Appeals Board has “. . . held that since EPA's ability to obtain financial information about a respondent is limited at the outset of a case, ‘a respondent's ability to pay may be presumed until it is put at issue by a respondent.’” *Id.* 321 (citing *New Waterbury* 541). *See also, In re Crespo Realty, Inc.*, EPA Docket No. TSCA-03-2012-0069, 2013 EPA Admin. Enforce. LEXIS 18387, *20-21 (RJO, Initial Decision and Default Order, Aug. 8, 2013) (“The official record is devoid of any information submitted by Respondent raising inability to pay the penalty assessed in this manner [sic]. Since any financial information otherwise contained in the record is insufficient, I find that Respondent is able to pay.”).

As described above, having taken into account the statutory factors of TSCA, enumerated in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), consistent with *ERPP* methodology, Complainant has determined that the proposed penalty of \$38,520 is appropriate for Respondent's violations as alleged in the Complaint. Accordingly, Complainant seeks the assessment of a civil penalty of \$38,520 against Respondent for its violations of Section 409 of TSCA and 40 C.F.R. Part 745, Subpart E, as alleged in the Complaint.

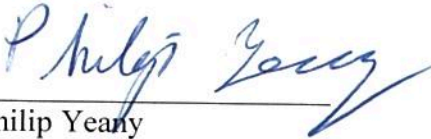
IV. CONCLUSION

Complainant has demonstrated herein that Respondent has defaulted by failing to file an Answer to the Complaint. By doing so, Respondent is deemed to have admitted the factual allegations in the Complaint supporting the legal conclusions regarding its violations of TSCA and 40 C.F.R. Part 745, Subpart E, as alleged in the Complaint. Complainant has also shown that the relief requested against Respondent, the assessment of a \$38,520 civil penalty, is not clearly inconsistent with the record of this proceeding or TSCA, the statute authorizing this proceeding. Therefore, by operation of 40 C.F.R. § 22.17(c), it is incumbent upon the Regional Judicial and Presiding Officer to impose the relief requested in the Complaint and herein. Accordingly, for the foregoing reasons, Complainant respectfully requests that the Regional Judicial and Presiding Officer issue a Default Order against Respondent, finding Respondent

liable for the violations alleged in the Complaint and ordering Respondent to pay a civil penalty of \$38,520.

Respectfully submitted,

8/4/17
Date


Philip Yeany
Senior Assistant
Regional Counsel

EXHIBITS

- A. Administrative Complaint and Notice of Opportunity for Hearing (March 10, 2017)
- B. Certified Mail Return Receipt (March 22, 2017)
- C. Cover Letter to Administrative Complaint (March 10, 2017)
- D. August 2010 *Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation and Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (Appendices A and B revised April 2013)
- E. Declaration of Craig Yussen (August 1, 2017)
- F. Circumstance Table with Penalties
- G. Email messages of April 16, 2017 (without attachment), and May 4, 2017 (without attachment)

EXHIBIT A

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the matter of:	: Administrative Complaint
	:
RFN Enterprise, Inc.	: U.S. EPA Docket No.
428 Foxridge Drive	: TSCA-03-2017-0106
Leesburg, VA 20175	:
Respondent,	: Proceeding Under Section 16(a) of the
	: Toxic Substances Control Act
5338 Reisterstown Rd.	: 15 U.S.C. § 2615(a).
Baltimore, MD 21215	:
Target Housing.	:
	:

**ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR A
HEARING**

I. INTRODUCTION

1. This Administrative Complaint and Notice of Opportunity for a Hearing (“Complaint”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency, (“EPA” or the “Agency”) by Sections 16(a) and 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2615(a) and 2689, the federal regulations set forth at 40 C.F.R. Part 745, Subpart E, and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (“*Consolidated Rules of Practice*”), 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. The Administrator has delegated this authority, under TSCA, to the Regional Administrators, and this authority has been further delegated in the U.S. EPA Region III to, *inter alia*, the Director of the

Land and Chemicals Division (“Complainant”), pursuant to EPA Region III Delegation No. 12-2-A. The Respondent in this action is RFN Enterprise, Inc. (the “Respondent”). This Complaint alleges violations by the Respondent of Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart E - *Residential Property Renovation*, in connection with a renovation conducted at 5338 Reierstown Rd., Baltimore, MD 21215.

II. JURISDICTION, BACKGROUND AND DEFINITIONS

2. EPA and the Office of Administrative Law Judges have jurisdiction over this matter pursuant to Sections 16 and 409 of TSCA, 15 U.S.C. §§ 2615 and 2689, 40 C.F.R. § 745.87, and 40 C.F.R. §§ 22.1(a)(5) and 22.4.
3. In 1992, Congress enacted the Residential Lead-Based Paint Hazard Reduction Act (“RLBPHRA”), Pub. L. 102–550, title X, Oct. 28, 1992, 106 Stat. 3897. The RLBPHRA addresses the need to control exposure to lead-based paint hazards in residential housing. The RLBPHRA amended TSCA by adding *Subchapter IV - Lead Exposure Reduction*, Sections 401 through 412 of TSCA, 15 U.S.C. §§ 2681 through 2692, which provides authority for the Administrator of EPA to promulgate implementing regulations.
4. Pursuant to Section 409 of TSCA, 15 U.S.C. § 2689, it is unlawful for any person to fail or to refuse to comply with any provision of *Subchapter IV – Lead Exposure Reduction* of TSCA, or with any rule issued thereunder.
5. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), any person who violates Section 409 of TSCA, 15 U.S.C. § 2689 shall be liable for a civil penalty.

6. EPA promulgated 40 C.F.R. Part 745, Subpart E - *Residential Property Renovation* regulations (“RRP Rule”) under the authority of *Subchapter IV - Lead Exposure Reduction* in rulemaking actions published on June 1, 1998 (63 Fed. Reg. 29919).
7. Pursuant to 40 C.F.R. § 745.82, the requirements of the RRP Rule apply to all renovations performed for compensation in target housing, except as described in 40 C.F.R. §§ 745.82(a) and (b).
8. Pursuant to 40 C.F.R. § 745.82(a), the requirements of the RRP Rule do not apply to renovations in target housing where a determination has been made that the components affected by the renovation are free of lead-based paint.
9. Pursuant to 40 C.F.R. § 745.82(b), the information distribution requirements of 40 C.F.R. § 745.84 do not apply to renovations that are emergency renovations.
10. Pursuant to 40 C.F.R. § 745.83, the definitions in 40 C.F.R. § 245.103 also apply to the RRP Rule.
11. Pursuant to 40 C.F.R. § 745.83, the term “person” means 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.
12. Pursuant to 40 C.F.R. § 745.83, the term “firm” means 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. Pursuant to 40 C.F.R. § 745.83, the term “renovation” means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement 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, planning thresholds to install weather stripping), and interim controls that disturb painted surfaces. The term renovation does not include minor repair and maintenance activities.
14. Pursuant to 40 C.F.R. § 745.83, the term “minor repair and maintenance activities” means activities, including minor heating, ventilation or air condition work, electrical work, and plumbing, that disrupt six (6) square feet or less of painted surface per room for interior activities or twenty (20) square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by 40 C.F.R. § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surfaces.
15. Pursuant to 40 C.F.R. § 745.103, “housing for the elderly” means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

16. Pursuant to 40 C.F.R § 745.83, the term “renovator” means an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.
17. Pursuant to Section 401(17) of TSCA, 15 U.S.C. § 2681(17), the term “target housing” means any housing constructed prior to 1978, except that the term “target housing” does not include housing for the elderly, housing for 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 0-bedroom dwelling.
18. The State of Maryland does not have a renovation program that is authorized under 40 C.F.R. Part 745, Subpart Q.

III. GENERAL ALLEGATIONS

19. At all times relevant to the violations alleged in this Complaint, RFN Enterprise, Inc. (“RFN”) was incorporated in Virginia.
20. The Respondent is and, at the time of the violations alleged herein, was a firm as defined in 40 C.F.R. § 745.83
21. Within the time period between August 2012 and April 2013, the Respondent entered into a contract with the owner of the house at 5338 Reisterstown Road (the “House”) to renovate the House for compensation.
22. The renovation work primarily consisted of the construction and painting of walls.
23. The House was built prior to 1978, and is a two-story residence.

24. On April 1, 2013, an inspector from the Maryland Department of the Environment (“MDE”) observed renovations of the House (“April 1 Inspection”).
25. During the April 1 Inspection, the MDE inspector observed conditions both inside and outside the House.
26. The House is a single family residence.
27. During the April 1 Inspection of the House, the MDE inspector took photographs of the interior and exterior of the House (“MDE Photographs”).
28. At the time of the April 1 Inspection, renovators, at the direction and on behalf of the Respondent, had disturbed and/or removed paint from the interior of the House.
29. During the April 1 Inspection, the MDE inspector, by phone, talked to Jose Nataren of RFN about complying with RRP Rule’s work practice standards at the House.
30. At the time of the April 1 Inspection, Respondent had not posted the warning signs at the House prior to the start of the renovation.
31. At the time of the April 1 Inspection, the Respondent had failed to cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material with plastic sheeting or other impermeable material during the renovation of the House as required by 40 C.F.R. § 745.85(a)(2)(i)(D).
32. At the time of the April 1 Inspection, the Respondent had failed to contain waste from renovation activities in order to prevent the release of dust and debris before the Respondent removed the waste from the work area at the House for storage or disposal as required by 40 C.F.R. § 45.85(a)(4)(i).

33. At the April 1 Inspection, the Respondent had not removed all objects from the work area, including furniture, rugs, and window coverings, or covered them with plastic sheeting or other impermeable material., as required by 40 C.F.R. § 745.85(a)(2)(i)(A).
34. At the April 1 Inspection, the Respondent had failed to cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable materials during the renovation of the House, as required by 40 C.F.R. § 745.85(a)(2)(i)(B).
35. The Respondent had not obtained certification from EPA to perform renovations at target housing prior to performing renovation at the House, as required by 40 C.F.R. § 745.81(a)(2)(ii) and 40 C.F.R. § 745.89.
36. On May 22, 2013, EPA conducted an inspection at the home office of RFN, at 428 Foxridge Dr., Leesburg, VA 20175 to determine the Respondent's compliance with the RRP Rule ("May 22 Inspection").
37. At all times relevant to the violations alleged in this Complaint, Frances Nataren was President of RFN and Jose Nataren was Vice President of RFN.
38. During the May 22 Inspection, the EPA inspector met with both Jose and Frances Nataren.
39. During the May 22 Inspection, Jose and Frances Nataren stated to the EPA inspector that RFN had not obtained certification from EPA to perform renovations at target housing.
40. At the time of the May 22 Inspection, the House was not "housing for the elderly" and did not qualify as "0-bedroom dwelling[s]" as those terms are defined by 40 C.F.R. § 745.103.
41. At the time of the May 22 Inspection, the House was not for persons with disabilities.

42. At the time of the May 22 Inspection, the Respondent did not have either the written acknowledgement required by 40 C.F.R. § 745.84(a)(1)(i) or the certificate of mailing required by 40 C.F.R. § 745.84(a)(1)(ii) showing that it had provided EPA's Lead Hazard Information Pamphlet to the owner of the House, as required by 40 C.F.R. §§ 745.86(b)(2) and (3).
43. At the time of the May 22 Inspection, the Respondent did not have records documenting that the Respondent complied with 40 C.F.R. § 745.85(a)'s requirements for the performance of lead-safe work practices and 40 C.F.R. § 745.85(b)'s requirements for the performance of the post-renovation cleaning, as required by 40 C.F.R. § 745.86(b)(6).
44. At all times relevant to this Complaint, the House was "target housing" as such term is defined by Section 401(17) of TSCA, 15 U.S.C. § 2681(17).
45. During the May 22 Inspection, the EPA inspector obtained from the Respondent a contract for renovation of the House that indicated the Respondent had received payment for the renovation of the House.
46. The renovations of the House, including the disturbing and/or removal of paint from the interior of the House, were not "minor repair and maintenance activities," as defined by 40 C.F.R. § 745.83.
47. The contract and MDE Photographs of the House demonstrate that the renovations of the House, including the disturbing and/or removal of paint from the interior of the House, were not minor repair and maintenance activities,
48. The renovation of the House was not part of an abatement, as defined by 40 C.F.R. § 745.223.

49. Prior to the renovation, the components of the House affected by the renovation were not determined to be free of lead-based paint, as described in 40 C.F.R. § 745.82(a).
50. The renovation of the House was not an emergency renovation, as defined by 40 C.F.R. § 745.82(b).
51. The disturbing and/or removal of paint from the interior of the House was a “renovation” as such term is defined by 40 C.F.R. § 745.83.
52. Because the renovation of the House was a “renovation performed for compensation in target housing” that was not excepted under 40 C.F.R. §§ 745.82(a) or (b), Respondent was required to meet the obligations of 40 C.F.R. Part 745, Subpart E.

IV. VIOLATIONS

Count I – Failure to Obtain Initial Firm Certification

53. The foregoing allegations contained in this Complaint are incorporated by reference as though fully set forth herein.
54. Pursuant to 40 C.F.R. § 745.81(a)(2)(ii) and 40 C.F.R. § 745.89(a)(1), prior to performing renovations at target housing for compensation, firms are required to obtain certification from EPA under § 745.89(a)(1).
55. The Respondent was not EPA certified under 40 C.F.R. § 745.89(a)(1) prior to or at the time of performing renovations at the House, as described herein.
56. The Respondent’s failure to obtain certification prior to or at the time of performing renovations at the House constitutes a violation of 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a)(1), and Section 409 of TSCA, 15 U.S.C. § 2689.

Count II – Failure to Make Available All Records Demonstrating the Performance of All Lead-Safe Work Practices

57. The foregoing allegations contained in this Complaint are incorporated by reference as though fully set forth herein.
58. Pursuant to 40 C.F.R. § 745.86, firms performing renovations on target housing are required to retain for three years following completion of the renovation and, if requested, make available to EPA all records necessary to document that the renovator(s) complied with the requirements of 40 C.F.R. § 745.85, including performance of the lead-safe work practices described in 40 C.F.R. § 745.85(a) and the post-renovation cleaning described in 40 C.F.R. § 745.85(b).
59. During the time of the May 22 Inspection, upon a request from the EPA inspector, the Respondent failed to make available to EPA all records demonstrating the performance of all lead-safe practices described in 40 C.F.R. § 745.85(a) and the post-renovation cleaning described in 40 C.F.R. § 745.85(b) during the 2013 renovation of the House.
60. The Respondent's failure to make available to EPA all records necessary to document that the renovator complied with the requirements of 40 C.F.R. § 745.85 with respect to the renovation of the House is a violation of 40 C.F.R. § 745.86 and Section 409 of TSCA, 15 U.S.C. § 2689.

Count III – Failure to Post Warning Signs

61. The foregoing allegations contained in this Complaint are incorporated by reference as though fully set forth herein.

62. 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 the renovation activities to remain outside the work area, with an exception not relevant to this matter.
63. At the time of the April 1 Inspection, after renovations had begun, the Respondent had not posted the warning signs as required by 40 C.F.R. § 745.85(a)(1).
64. The Respondent's failure to post signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside the work area is a violation of 40 C.F.R. § 745.85(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count IV – Failure to Remove All Objects from the Work Area or to Cover Them

65. The foregoing allegations contained in this Complaint are incorporated by reference as though fully set forth herein.
66. Pursuant to 40 C.F.R. § 745.85(a)(2), before beginning a renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed.
67. 40 C.F.R. § 745.85(a)(2) enumerates five separate and independent requirements imposed on firms performing interior renovations so that no dust or debris leaves the work area during the renovation.
68. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(A), firms performing interior renovations must remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material.

69. At the time of the April 1 Inspection, after renovations had begun, the Respondent had not removed all objects from the work area, including furniture, rugs, and window coverings, or covered them with plastic sheeting or other impermeable material as required by 40 C.F.R. § 745.85(a)(2)(i)(A).

70. The Respondent's failure to remove all objects from the work area or cover them with plastic sheeting or other impermeable material is a violation of 40 C.F.R. § 745.85(a)(2)(i)(A) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count V – Failure to Close All Ducts Opening in the Work Area

71. The foregoing allegations contained in this Complaint are incorporated by reference herein as though fully set forth in length.

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

73. At the time of the April 1 Inspection, after renovations had begun, the Respondent had failed to cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable materials during the renovation of the House as required by 40 C.F.R. § 745.85(a)(2)(i)(B).

74. The Respondent's failure to cover all ducts with taped-down plastic sheeting or other impermeable materials is a violation of 40 C.F.R. § 745.85(a)(2)(i)(B) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count VI – Failure to Close All Windows and Doors in the Work Area

75. The foregoing allegations contained in this Complaint are incorporated by reference herein as though fully set forth in length.
76. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(C), firms performing interior renovations must close windows and doors in the work area and cover them with a plastic sheeting or other impermeable material.
77. At the time of the April 1 Inspection, after renovations had begun, the Respondent had not closed all windows and doors or covered them with plastic sheeting or other impermeable material during the renovation of the House as required by 40 C.F.R. § 745.85(a)(2)(i)(C).
78. The Respondent's failure to close windows and doors in the work area and cover them with plastic sheeting or other impermeable material is a violation of 40 C.F.R. § 745.85(a)(2)(i)(C) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count VII – Failure to Cover the Floor Surface

79. The foregoing allegations contained in this Complaint are incorporated by reference herein as though fully set forth in length.
80. Pursuant to 40 C.F.R. § 745.85(a)(2)(i)(D), firms performing interior renovations 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.
81. At the time of the April 1 Inspection, after renovations had begun, the Respondent had failed to cover the floor surface, including installed carpet, with taped-down plastic

sheeting or other impermeable material with plastic sheeting or other impermeable material during the renovation of the House as required by 40 C.F.R. § 45.85(a)(2)(i)(D).

82. The Respondent's failure to cover the floor surface with taped-down plastic sheeting or other impermeable material within the work area is a violation of 40 C.F.R. § 745.85(a)(2)(i)(D) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count VIII - Failure to Contain Waste

83. The foregoing allegations contained in this Complaint are incorporated by reference as though fully set forth herein.
84. Pursuant to 40 C.F.R. § 745.85(a)(4)(i), firms conducting renovations are required to contain waste from renovation activities in order to prevent the release of dust and debris before the waste is removed from the work area for storage or disposal.
85. At the time of the April 1 Inspection, after renovations had begun, the Respondent had failed to contain waste from renovation activities in order to prevent the release of dust and debris before the Respondent removed the waste from the work area at the House for storage or disposal as required by 40 C.F.R. § 745.85(a)(4)(i).
86. The Respondent's failure to contain waste from renovation activities in order to prevent the release of dust and debris before the Respondent removed the waste from the work area at the House for storage or disposal is a violation of 40 C.F.R. § 745.85(a)(4)(i) and Section 409 of TSCA, 15 U.S.C. § 2689.

Count IX - Failure to Obtain a Written Acknowledgement of Provision of EPA's Lead Hazard Information Pamphlet or Written Certification of Mailing of the Pamphlet.

87. The foregoing allegations contained in this Complaint are incorporated by reference herein as though fully set forth at length.
88. 40 C.F.R. § 745.84(a)(1) requires that, no more than 60 days before beginning a renovation of any residential dwelling unit of target housing, the firm performing the renovation must provide EPA's Lead Hazard Information Pamphlet to the owner of the unit that is undergoing renovations.
89. In addition, 40 C.F.R. § 745.84(a) (1) requires renovators to obtain either a written acknowledgement that the owner of the dwelling unit was provided with EPA's Lead Hazard Information Pamphlet (40 C.F.R. § 745.84(a)(1)(i)) or a certificate of mailing the pamphlet to the owner at least seven days prior to the renovation (40 C.F.R. § 745.84(a)(1)(ii).
90. The dwelling unit in this matter consists of the entire house because it is a single family residence.
91. The Respondent did not obtain either the written acknowledgement required by 40 C.F.R. § 745.84(a)(1)(i) or the certificate of mailing required by 40 C.F.R. § 745.84(a)(1)(ii) showing that it had provided EPA's Lead Hazard Information Pamphlet to the owner of the House.
92. Respondent's failure to obtain either the written acknowledgement required by 40 C.F.R. § 745.84(a)(1)(i) or the certificate of mailing required by 40 C.F.R. § 745.84(a)(1)(ii) is a violation of 40 C.F.R. § 745.84(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

V. PROPOSED CIVIL PENALTY

93. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of Section 409 of TSCA, 15 U.S.C. § 2689, shall be liable to the United States for a civil penalty. Section 16(a) of TSCA, (15 U.S.C. § 2615(a)), 40 C.F.R. § 745.87(d)), the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note), and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. § 19.4, authorize a penalty of not more than \$37,500 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689 that occurs after January 12, 2009.
94. For purposes of determining the amount of any civil penalty to be assessed, Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), requires EPA to take into account the nature, circumstances, extent, and gravity of the violation or violations alleged 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 (“statutory factors”). In developing a proposed penalty, Complainant will take into account the particular facts and circumstances of this case with specific reference to the statutory factors set forth in Section 16 of TSCA and EPA’s August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation and Education Rule: Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule (“ERP”)*, revised April 2013, a copy of which is enclosed with this Complaint. The *ERP* represents an analysis of the statutory factors listed above, as well as guidance on their application to particular cases. The *ERP* also provides a rational, consistent, and equitable calculation methodology for applying these factors to particular cases.

95. Calculated pursuant to the *ERP*, EPA proposes to assess a civil penalty of thirty-eight thousand, five hundred and twenty dollars (\$38,520) against the Respondent for the nine (9) violations alleged herein.
96. The calculations for the proposed penalty are detailed in the Appendix to this Complaint.
97. EPA's proposed penalty is not a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. EPA will consider, among other factors, Respondent's ability to pay as an adjustment to the proposed civil penalty assessed in this Complaint. The proposed penalty reflects a presumption of the Respondent's ability to pay the penalty and to continue in business based on the size of its business and the economic impact of the proposed penalty on its business. The burden of raising and demonstrating an inability to pay rests with Respondent. In addition, to the extent that facts or circumstances unknown to Complainant at the time of the issuance of the Complaint become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in the Complaint.
98. If the penalty proposed herein is contested through the hearing process described below, Complainant is prepared to support the statutory basis for the elements of the penalty policy applied in this case as well as the amount and nature of the penalty proposed. If appropriate, penalty adjustments may be made during settlement negotiations. EPA reserves the right to seek higher penalties if new evidence supports such assessment.

VI. NOTICE AND OPPORTUNITY TO REQUEST A HEARING

99. The Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint or the appropriateness of the proposed penalty. To request

a hearing, Respondent must file a written Answer to the Complaint, within thirty (30) days of receipt of this Complaint, with:

Lydia A. Guy, Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

100. The Answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. Where Respondent has no knowledge of the facts contained in an allegation, the Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which the Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts alleged in this Complaint that are not admitted, denied or explained in the Answer will be considered admitted.
101. Failure of the Respondent to file a written Answer may result in the filing of a Motion for a Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings. Default shall constitute, for the purposes of this proceeding only, an admission of all facts alleged in this Complaint and a waiver of Respondent's right to contest such factual allegations.
102. Any hearing requested by the Respondent will be held at a location to be determined at a later date pursuant to the *Consolidated Rules of Practice* at 40 C.F.R. § 22.21(d). The hearing will be conducted in accordance with the provisions of the *Consolidated Rules of Practice*.

103. A copy of Respondent's Answer and all other documents that the Respondent files in this action should be sent to the attorney assigned to represent Complainant in this case, Philip Yeany, at:

Philip Yeany (3RC50)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

VII. SETTLEMENT CONFERENCE

104. Complainant encourages settlement of this proceeding at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of TSCA. Whether or not a hearing is requested, the Respondent may request a settlement conference with the Complainant to discuss the allegations of the Complaint, and the amount of the proposed civil penalty. However, a request for a settlement conference does not relieve the Respondent of its responsibility to file a timely Answer to the Complaint.
105. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The filing of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint and to appeal the Final Order accompanying the Consent Agreement.
106. If the Respondent wishes to arrange a settlement conference, Respondent or Respondent's legal counsel should contact Mr. Yeany at (215) 814-2495 prior to the expiration of the thirty (30) day period following the receipt of this Complaint. Once again, however, such a request for a settlement conference does not relieve the

Respondent of its responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.

VIII. QUICK RESOLUTION

107. In accordance with 40 C.F.R. § 22.18(a) of the *Consolidated Rules of Practice*, the Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint. If the Respondent pays the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1) of the *Consolidated Rules of Practice*, no Answer need be filed.
108. If the Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer but need additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2) of the *Consolidated Rules of Practice*, Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint stating that the Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with Lydia A. Guy, the Regional Hearing Clerk and a copy shall be provided to Mr. Yeany. Within sixty (60) days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17 of the *Consolidated Rules of Practice*.
109. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3) of the *Consolidated Rules of Practice*, the Regional Judicial Officer or Regional Administrator

shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

110. Payment of the civil penalty amount required under the terms of Paragraph 95, above, shall be made as follows:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, that is, TSCA-03-2017-0106;
- b. All checks shall be made payable to "United States Treasury;"
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Heather Russell (513-487-2044)

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

US EPA
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

U.S. EPA
Cincinnati Finance Center
26 W. Martin Luther King Drive, MS-002
Cincinnati, OH 45268-0001

- f. All electronic payments made by electronic wire transfers shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 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

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX /Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Randolph Maxwell 202-874-3720
or REX, 1-866-234-5681

- h. On-Line Payment Option for credit and debit card payments:

WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

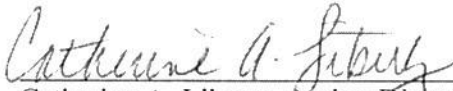
http://www.epa.gov/ocfo/finservices/make_a_payment.htm

111. Respondent shall submit copies of the check(s), or verification of the wire transfer(s) or electronic payment(s) to Lydia A. Guy, the Regional Hearing Clerk and Mr. Yeany.

IX. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

112. The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: The Region III Office of Regional Counsel; the Region III Land and Chemicals Division; the Office of the EPA Assistant Administrator for Pesticides and Toxic Substances; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance of this Complaint until issuance of a final Agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, the Presiding Officer, the Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* (unilateral) communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the *Consolidated Rules of Practice* prohibit any *ex parte* discussion of the merits of a case between either party to this proceeding and the Administrator, members of the Environmental Appeals Board, the Presiding Officer, the Judicial Officer, the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is issued.

3-10-17
Date


Catherine A. Libertz, Acting Director
Land and Chemicals Division

APPENDIX

<u>COUNT</u>	<u>EXTENT LEVEL</u>	<u>CIRCUMSTANCE LEVEL</u>	<u>PENALTY</u>
Count I	Minor	3a (ERP, Appendix A, page A-3)	\$4,500
Count II	Minor	6a (ERP, Appendix A, page A-3)	\$600
Count III	Minor	1b (ERP, Appendix A, page A-1)	\$2,840
Count IV	Minor	2a (ERP, Appendix A, page A-5)	\$6,000
Count V	Minor	2a (ERP, Appendix A, page A-5)	\$6,000
Count VI	Minor	2a (ERP, Appendix A, page A-5)	\$6,000
Count VII	Minor	2a (ERP, Appendix A, page A-5)	\$6,000
Count VIII	Minor	2a (ERP, Appendix A, page A-5)	\$6,000
Count IX	Minor	4b (ERP, Appendix A, page A-2)	\$580
TOTAL PROPOSED PENALTY			\$38,520

EPA has determined the extent level for each violation and calculated the proposed penalty for each violation using the matrix in the ERP, Appendix B, page B-2.

EXHIBIT B

NOVA
UNITED STATES POSTAL SERVICE
22 MAR '17
PM 2 L



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
MAIL CODE 38050/VEANY
PHILADELPHIA, PA 19103-2029
OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300

30X*

USPS TRACKING#



9590 9401 0022 5168 1393 96

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Jose and Frances Nataren
428 Foxridge Drive
Leesburg, VA 20175



9590 9401 0022 5168 1393 96

2. Article Number (Transfer from service label)

7015 0640 0001 0393 1297

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- Agent
- Addressee

B. Received by (Printed Name)

Frances Nataren

C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No



3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt

EXHIBIT C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SERVICE BY
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAR 10 2017

Jose and Frances Nataren
428 Foxridge Drive
Leesburg, VA 20175

Re: Complaint and Notice of Opportunity for Hearing
EPA Docket No. RCRA-03-2017-0106

Dear Mr. and Mrs. Nataren:

Enclosed please find a copy of the Complaint, Compliance Order, and Notice of Opportunity for Hearing ("Complaint") filed today with the Regional Hearing Clerk concerning alleged violations by RFN Enterprises, Inc. ("RFN") of Section 409 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2689, which seeks to control exposure to lead-based paint hazards in residential housing. You should read and analyze the Complaint carefully to determine the alternatives available to you in responding to the alleged violations, proposed penalty, and compliance requirements.

The Complaint states that RFN failed to post warning signs, failed to remove all objects from the work area or to cover them, failed to close all ducts opening in the work area, failed to close all windows and doors in the work area, failed to cover the floor surface, failed to contain waste, failed to obtain initial firm certification, failed to obtain a written acknowledgement of provision of EPA's lead hazard information pamphlet, and failed to make available all records demonstrating the performance of all lead-safe work practices and the Respondent's compliance with post-renovation cleaning requirements.

You must file an Answer to this Complaint within thirty (30) days of its receipt. The Answer must specifically respond to each of the allegations in the Complaint. Your failure to respond to this Complaint by specific Answer within thirty (30) days of your receipt of the Complaint will constitute an admission of the Complaint's allegations. If you fail to file an Answer, EPA will file a Motion for a Default Order. This could result in the issuance of a Default Order imposing the Complaint's proposed penalty without further proceedings.

You may choose to request a hearing to contest any matter set forth in the Complaint. You must include your hearing request in your Answer to this Complaint. Whether or not you request a hearing, you may ask for an informal settlement conference to discuss resolution of this

case. The attorney assigned to this case is Philip Yeany, Senior Assistant Regional Counsel. If you are represented by legal counsel, your counsel can contact Mr. Yeany on your behalf by mail at the following address:

Philip Yeany
Senior Assistant Regional Counsel (3RC50)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

You can reach Mr. Yeany by telephone at (215) 814-2495.

To the extent that your business qualifies as a "small business" under the Small Business Regulatory Enforcement and Fairness Act (SBREFA), enclosed is an *Information for Small Businesses* sheet, which provides information on compliance assistance and on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities. Any decision to participate in such program or to seek compliance assistance does not constitute a request for a settlement conference, relieve you of your obligation to file a timely answer to the Complaint, or create for you any new rights or defenses under law. Nor will such an action affect EPA's enforcement of the Complaint. To preserve your legal rights, you must comply with all rules governing the administrative enforcement process, as set forth in the Consolidated Rules of Practice in 40 C.F.R. Part 22. The SBREFA Ombudsman does not participate in the resolution of EPA's enforcement action.

Also enclosed is a copy of 40 C.F.R. Part 22, *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules"). The *Consolidated Rules* govern EPA's administrative adjudicatory proceedings such as the filing of the enclosed complaint against RFN and any subsequent assessment of an administrative civil penalty. The enclosed copy of the *Consolidated Rules* is the version that is currently in effect.

On January 9, 2017, EPA amended the *Consolidated Rules* with the amendments to take effect on March 10, 2017. (A copy of the *Federal Register* notice with amendments is also enclosed). In accordance with the Presidential directive as expressed in the memorandum of January 20, 2017, EPA delayed the effective date of the amendments until March 21, 2017. (A copy of the *Federal Register* notice with amendments is also enclosed.)

Sincerely,



Catherine A. Libertz, Acting Director
Land and Chemicals Division

Enclosures

cc: Philip Yeany (w/o enclosures)
Craig Yussen (w/o enclosures)

EXHIBIT D



**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)**

Interim Final Policy

August, 2010

**United States Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Office of Civil Enforcement
Waste and Chemical Enforcement Division**

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Section 1: Introduction, Overview and Background

I. Introduction

This document sets forth guidance for the U.S. Environmental Protection Agency (EPA or the Agency) to use in determining the appropriate enforcement response and penalty amount for violations of Title IV of the Toxic Substances Control Act (TSCA) which gives the Agency the authority to address lead-based paint (LBP) and LBP hazards in target housing, and other buildings and structures. The goal of this consolidated Enforcement Response and Penalty Policy (ERPP) is to provide fair and equitable treatment of the regulated community, predictable enforcement responses, and comparable penalty assessments for comparable violations, with flexibility to allow for individual facts and circumstances of a particular case. The Renovation, Repair, and Painting Rule (RRP Rule),¹ Pre-Renovation Education Rule (PRE Rule),² and Lead-Based Paint Activities, Certification, and Training Rule (LBP Activities Rule)³ were each promulgated under the authority of Title IV of TSCA and are addressed in this ERPP.⁴

This guidance applies only to violations of EPA's civil regulatory programs. It does not apply to enforcement pursuant to criminal provisions of laws or regulations that are enforced by EPA. The procedures set forth in this document are intended solely for the guidance of government professionals. They are not intended and cannot be relied on to create rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with this policy and to change it at any time without public notice. This policy is not binding on the Agency. Enforcement staff should continue to make appropriate case-by-case enforcement judgments, guided by, but not restricted or limited to, the policies contained in this document.

This Policy is immediately effective and applicable, and it supersedes any enforcement response or penalty guidance previously drafted or issued for the PRE Rule or LBP Activities Rule.

II. Overview of the Policy

This ERPP is divided into four main sections. The first section, "Introduction, Overview and Background" provides the statutory and regulatory setting for this policy. The second section, "Determining the Level of Enforcement Response," describes the Agency's options for

¹ 40 C.F.R. Part 745, Subparts E, L and Q (73 Fed. Reg. 21692; April 22, 2008) (amending the PRE Rule, LBP Activities Rule, and State/Tribal Programs Rule, respectively, at §§ 745.80-745.91, § 745.220, § 745.225, § 745.320, § 745.324, § 745.326, § 745.327, § 745.339). www.epa.gov/lead/pubs/renovation.htm#tenants, or www.gpoaccess.gov.

² 40 C.F.R. Part 745, Subpart E (§§ 745.80-745.88) (63 Fed. Reg. 29907; June 1, 1998).

³ 40 C.F.R. Part 745, Subpart L (§§ 745.220 – 745.239) (61 Fed. Reg. 45778; August 29, 1996, as amended 64 Fed. Reg. 42849; August 6, 1999).

⁴ The § 1018 Disclosure Rule is addressed in a separate ERPP available in Appendix C at TSCA Enforcement Policy and Guidance Documents.

Section 1: Introduction, Overview and Background

responding to violations of TSCA. The third section, “Assessing Civil Administrative Penalties,” elaborates on EPA’s policy and procedures for calculating civil penalties against persons who violate section 409 of TSCA by failing or refusing to comply with the regulatory requirements of the PRE, RRP and LBP Activities Rules. The fourth section, the appendices, contains, among other things, tables to be used in calculating civil penalties for this policy. The appendices to this ERPP are: Appendix A - Violations and Circumstance Levels; Appendix B - Gravity-Based Penalty Matrices; Appendix C - References for Policy Documents; Appendix D - List of Supplemental Environmental Projects (SEPs).

III. Background

In 1992, the United States Congress enacted Title X - Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 United States Code (U.S.C.) § 4851 (enacted as Title X of the Housing and Community Development Act of 1992). Section 1021 of Title X amended the Toxic Substances Control Act to add Title IV, entitled “Lead Exposure Reduction.”

Pursuant to Section 406(b) of TSCA, EPA promulgated regulations at 40 C.F.R. Part 745, Subpart E, residential property renovations, requiring, among other things, persons who perform for compensation a renovation of pre-1978 housing (“target housing”) to provide a lead hazard information pamphlet to the owner and occupant prior to commencing the renovation.

Pursuant to Section 402(a) of TSCA, EPA promulgated regulations at 40 C.F.R. Part 745, Subpart L, Lead-Based Paint Activities, prescribing procedures and requirements for the accreditation of training programs and renovations, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, work practice standards for performing such activities, and delegation of programs.

Pursuant to Section 402(c)(3) of TSCA, EPA promulgated regulations amending at 40 C.F.R. Part 745, Subparts E and L, residential property renovations, prescribing procedures and requirements for the accreditation of training programs, certification of individuals and firms, work practice standards for renovation, repair and painting activities in target housing and child occupied facilities, and delegation of programs (Subpart Q) under Section 404.

Pursuant to Section 408 of TSCA, each department, agency, and instrumentality of the executive, legislative, and judicial branches of the federal government is subject to all federal, state, interstate, and local requirements, both substantive and procedural, regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.⁵

⁵ Therefore, federal agencies are subject to the PRE, RRP, and LBP Activities Rules ERPP and EPA has statutory penalty authority over federal agencies for violations of the LBP, LBP activities and LBP hazard requirements (15 U.S.C. § 2688). Regions generally must notify and consult with OECA’s Federal Facilities Enforcement Office prior to bringing an enforcement action against a federal agency. See, Appendix C, Memorandum, *Redelegation of Authority and Guidance on Headquarters Involvement in Regulatory Enforcement Cases*.

Section 2: Determining the Level of Enforcement Response

The failure or refusal to comply with any requirement of the PRE, RRP, or LBP Activities Rules is a prohibited act under Section 409 of TSCA (15 U.S.C. § 2689) and civil penalties can be assessed to address such violations pursuant to Section 16 of TSCA (15 U.S.C. § 2615) for each violation of Section 409. A civil penalty action is the preferred enforcement response for most violations.

Once the Agency finds that a violation of TSCA has occurred, it will need to determine the appropriate level of enforcement response for the violation.⁶ EPA can respond with a range of enforcement response options. These options include:

- Civil Administrative Complaints
- Notices of Noncompliance
- Civil Judicial Referrals
- Criminal Proceedings

I. Civil Administrative Complaints

A civil administrative complaint⁷ is the appropriate response to violations of the PRE, RRP, and LBP Activities Rules or failure to comply with a Notice of Noncompliance. Violators may be subject to civil administrative action including the assessment of civil penalties, with or without conditions, pursuant to 15 U.S.C. § 2615(a). Civil penalties are to be assessed by the Administrator by an order made on the record, after the violator is given a written notice and opportunity to request a hearing on the order, within 15 days of the date the notice is received by the violator.

A civil administrative complaint may include a proposed penalty that has been calculated pursuant to this policy. Alternatively, the complaint may specify the number of violations for which a penalty is sought, a brief explanation of the severity of each violation alleged, and a recitation of the statutory penalty authority applicable for each violation in the complaint.⁸ This latter approach would not eliminate the need for EPA to specify a proposed penalty during the course of the administrative litigation and explain in writing how the proposed penalty was calculated in accordance with 15 U.S.C. § 2615, but would postpone the requirement until after the filing of pre-hearing information exchanges, at which time each party shall have exchanged all factual information considered relevant to the assessment of a penalty.⁹

⁶ See, Appendix C, TSCA Enforcement Policy and Guidance Documents, Memorandum, *Final List of Nationally Significant Issues and Process for Raising Issues to TPED*; November 1, 1994 or current revision. The NSI guidance was developed as implementation guidance to a memorandum, *Redelegation of Authority and Guidance on Headquarters Involvement in Regulatory Enforcement Cases*, Steven A. Herman, July 11, 1994.

⁷ A pre-filing notice or letter may be issued prior to the filing of a civil administrative complaint.

⁸ See, 40 C.F.R. § 22.14(a)(4).

⁹ See, 40 C.F.R. § 22.19(a)(4).

Section 2: Determining the Level of Enforcement Response

A civil administrative action can result in an enforceable agreement and the assessment of a penalty or a decision rendered by an Administrative Law Judge.¹⁰ Before an administrative penalty order becomes final, the Administrator must provide each Respondent, including federal agencies, with notice and an opportunity for a formal hearing, on the record,¹¹ in accordance with the Administrative Procedures Act. EPA's general rules of administrative practice are set forth in 40 C.F.R. Part 22, entitled "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits."

II. Notices of Noncompliance

On a case-by-case basis, EPA may determine that the issuance of a notice of noncompliance (NON),¹² rather than a civil administrative complaint is the most appropriate enforcement response to a violation.¹³ A NON should be issued to address violations in the following circumstances:

- i. Where a first time violator's violation has low probability of re-occurrence¹⁴ and low potential for harm; or
- ii. When a violator is in substantial compliance with the requirement as the specific facts and circumstances support.

A NON should, when necessary:

- i. Require corrective action by a specified date to return the violator to full compliance and resolve the violation(s);
- ii. Specify the type and nature of the corrective action necessary to return the violator to full compliance.

¹⁰ EPA may, at its discretion, issue a press release or advisory to notify the public of the filing of an enforcement action, settlement, or adjudication concerning a person's violation of TSCA. A press release can be a useful tool to notify the public of Agency actions for TSCA noncompliance and specifically, to educate the public on the requirements of LBP Program. The issuance of a press release or advisory as well as the nature of their contents are within the sole discretion of the Agency and shall not be subject to negotiation with the violator. See, *Restrictions on Communicating with Outside Parties Regarding Enforcement Actions*, March 8, 2006.

¹¹ See, 15 U.S.C. § 2615(a)(2)(A).

¹² A NON is not a formal enforcement action since there is no opportunity to respond to the notice on the record.

¹³ Supplementary guidance on this issuance of NONs in lieu of complaints may be provided for specific situations.

¹⁴ For example, if the same violation occurred on several occasions (e.g., a renovation firm failed to comply with the PRE Rule at 3 separate renovations including 3 units in a multi-unit renovation project), a NON should not be issued because the renovation firm demonstrated a pattern and practice of repeated violations.

Section 2: Determining the Level of Enforcement Response

- iii. Require proof that the corrective action was taken by the specified date to demonstrate to the Agency's satisfaction that further action is not necessary to resolve the violation(s) and prevent recurrence; and
- iv. Be placed in the violator's inspection, case development report record, or other file to document the Agency's response.

A NON should not:

- i. Be issued to a violator for a subsequent violation of a provision of the same rule (e.g., the RRP Rule) reoccurring within 5 years; or
- ii. Impose a monetary penalty.

III. Civil Judicial Referrals

EPA may ask the United States Department of Justice (DOJ) to seek injunctive relief in United States District Court under Section 17(a) of TSCA, 15 U.S.C. § 2616(a), to direct a violator to comply with the PRE, RRP, or LBP Activities Rules.

Civil Administrative Penalty and Injunction Relief: There may be instances in which the concurrent filing of a civil administrative complaint for penalty and a request for civil judicial injunctive relief under TSCA is appropriate.

IV. Criminal Proceedings

This ERPP does not address criminal violations of TSCA. However, if the civil case team has reason to believe that a violator knowingly violated any provision of TSCA, it should promptly refer the matter to the Criminal Investigation Division (CID). TSCA's criminal penalties are found in Section 16(b).¹⁵ In addition, pursuant to 18 U.S.C. Section 1001, it is a criminal violation to knowingly and willfully make a false or fraudulent statement in any matter within EPA's jurisdiction. In addition, it may be considered a criminal violation to knowingly or willfully falsify information provided to the Agency.

V. Parallel Criminal and Civil Proceedings

Although the majority of EPA's enforcement actions are brought as either a civil action or a criminal action, there are instances when it is appropriate to bring both a civil and a criminal action. These include situations where the violations merit the deterrent and retributive effects of

¹⁵ See, 15 U.S.C. § 2615(b).

Section 2: Determining the Level of Enforcement Response

criminal enforcement, yet a civil action is also necessary to obtain an appropriate remedial result, and where the magnitude or range of the environmental violations and the available sanctions make both criminal and civil enforcement appropriate.

Active consultation and cooperation between EPA's civil and criminal programs, in conformance with all legal requirements, including OECA's policy on parallel proceedings,¹⁶ are critical to the success of EPA's overall enforcement program. The success of any parallel proceedings depends upon coordinated decisions by the civil and criminal programs as to the timing and scope of their activities. For example, it will often be important for the criminal program to notify civil enforcement managers that an investigation is about to become overt or known to the subject. Similarly, the civil program should notify the criminal program when there are significant developments that might change the scope of the relief. In every parallel proceeding, communication and coordination should be initiated at both the staff and management levels and should continue until resolution of all parallel matters.

¹⁶ See, Appendix C, TSCA Enforcement Policy and Guidance Documents, Memorandum, *Parallel Proceedings Policy*, Granta Y. Nakayama, September 24, 2007.

Section 3: Assessing Civil Administrative Penalties

I. Computation of the Penalty

In determining the amount of any civil penalty for violations of the PRE, RRP, or LBP Activities Rules, "...the Administrator 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."¹⁷ On September 10, 1980, EPA published "Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy"¹⁸ which describes in greater detail the "civil penalty system" under TSCA. The purpose of this system is to ensure that civil penalties are assessed in a fair, uniform and consistent manner; that the penalties are appropriate for the violation committed; that economic incentives for violating TSCA are eliminated and the penalty is a sufficient deterrent to future violations. The TSCA civil penalty system provides standard definitions and a calculation methodology for application of the statutory penalty factors that TSCA requires the Administrator to consider in assessing a civil penalty. The TSCA civil penalty system also states that as regulations are developed, specific penalty guidelines, such as this ERPP, will be developed adopting in detail the application of the general civil penalty system to the new regulation. In developing a proposed penalty, EPA will take into account the particular facts and circumstances of each case, with specific reference to the TSCA statutory penalty factors. This ERPP follows the general framework described in the 1980 "Guidelines" for applying the TSCA statutory penalty factors to violations in civil administrative enforcement cases.¹⁹

For each violation, the penalty amount is determined in a multi-step process:

1. Determine the number of independently assessable violations.
2. Determine the economic benefit.²⁰ One component of the total penalty is the estimated amount of economic benefit the respondent realized from non-compliance. This calculation is also subject to adjustment based on the violator's ability to pay/ability to continue in business. Considerations for calculating economic benefit are discussed in Item III "Economic Benefit of Noncompliance" and Item V "Ability to Pay/Continue in Business," of this Section.²¹

¹⁷ See, 15 U.S.C. 2615(a)(2)(B)

¹⁸ See, Appendix C, TSCA Enforcement Policy and Guidance Documents, *Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*, 45 Fed. Reg. 59771, September 10, 1980. The Guidelines focus on what the proper civil penalty should be if a decision is made that a civil penalty is the proper enforcement remedy. The Guidelines do not discuss whether the assessment of a civil penalty is the correct enforcement response to a specific violation.

¹⁹ EPA will not apply civil administrative penalty policies in civil judicial context, but rather will apply statutory factors.

²⁰ Determining economic benefit is not specifically required by the Act, but is authorized under the "as justice may require" factor of 15 U.S. C. § 2615(a)(2)(B). See, 45 Fed. Reg. 59771, September 10, 1980.

²¹ See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

Section 3: Assessing Civil Administrative Penalties

3. Determine the gravity-based penalty. The other component of the total penalty is the gravity-based penalty. Under the TSCA Civil Penalty Guidelines, gravity-based penalties are determined in two stages:
 - a. The first stage is the determination of a gravity-based penalty (GBP) (gravity refers to the overall seriousness of the violation). To determine the gravity-based penalty, the following factors are considered:
 - i. The nature of the violation;
 - ii. The circumstances of the violation; and
 - iii. The extent of harm that may result from a given violation.

These factors are incorporated into the penalty matrices in Appendix B that specify the appropriate gravity-based penalty²² and are discussed in more detail in Item IV of this section.

The penalty amounts in the gravity based penalty matrices in Appendix B have been increased pursuant to the Debt Collection Improvement Act of 1996, which requires federal agencies to periodically adjust the statutory maximum penalties to account for inflation. EPA has thus increased the maximum penalty amounts for TSCA violations to \$37,500.²³ Additional penalty inflation increases occur periodically and are incorporated by reference into this ERPP.

- b. The second stage involves adjusting the gravity-based penalty upward or downward. Adjustments to the penalty amount are made by considering several factors including the following:
 - i. The violator's ability to pay/ability to continue in business;
 - ii. The violator's history of prior violations;
 - iii. The violator's degree of culpability; and
 - iv. Such other matters as justice may require.

These adjustments are discussed in more detail in Item V of this Section.²⁴

²² See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

²³ See, *Civil Monetary Inflation Adjustment Rule*, 73 Fed. Reg. 75340, December 11, 2008.

²⁴ See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

Section 3: Assessing Civil Administrative Penalties

II. Independently Assessable Violations

A separate civil penalty, up to the statutory maximum, can be assessed for each independent violation of TSCA. A violation is considered independent if it results from an act (or failure to act) which is not the result of any other violation for which a civil penalty is being assessed or if at least one of the elements of proof is different from any other violation.

Each requirement of the PRE, RRP, and LBP Activities Rules is a separate and distinct requirement and a failure to comply with any requirement is a violation of the PRE, RRP, or LBP Activities Rules. To determine whether a violation of the PRE, RRP, or LBP Activities Rules has occurred, the applicable requirements must be reviewed to determine which regulatory provisions have been violated.

Examples of the training provider requirements:

- Employ a training manager who has the requisite experience, education, and/or training.
- Meet the minimum training curriculum requirements for each of the disciplines.

Examples of the pre-renovation education requirements:

- Deliver pamphlet to the owner and adult occupant before renovation begins (but not more than 60 days before work begins) **or** mail pamphlet to owner at least 7 days before renovation begins.
- Obtain from the owner and adult occupant, written acknowledgement that they received the pamphlet or obtain a certificate of mailing at least 7 days before the renovation begins.

Examples of a renovation/abatement project:

- Retain all records for 3 years following completion of a project to demonstrate compliance with the PRE, RRP, or LBP Activities Rules.
- Follow work practice standards in each unit of a multi-family housing building.

After identifying each applicable regulatory requirement, the next step is to determine the number of renovations that took place or the number of affected persons to which information was required to be distributed or training provided. The total number of violations depends in part on the number of renovations or on the number of affected entities to which information was required to be distributed. For example:

Section 3: Assessing Civil Administrative Penalties

1. A renovator contracts with a homeowner for renovation activities within the homeowner's one owner-occupied unit. Even if several renovation activities were conducted at that location, the activity is considered one renovation for purposes of determining whether violations of the PRE Rule occurred, since only one person needs to be notified – the homeowner.
2. A renovator contracted with an owner of a multi-unit apartment building for 20 units to undergo renovation. This resulted in 20 separate requirements to comply with the PRE Rule for purposes of determining the number of violations because each unit had a separate adult occupant that the renovator needed to contact.
3. In another example, if there are three unrelated children under the age of 6 at a child-occupied facility undergoing renovation and the renovator fails to notify the parents/guardians of all 3 children, the total number of violations for failure to provide the pamphlet is 3.

Similar calculations can be performed for applicable requirements for other parts of the PRE, RRP, and LBP Activities Rules to determine which regulatory provisions have been violated. A detailed list of some, but not all, potential violations of the PRE, RRP, and LBP Activities Rules is provided in Appendix A.

III. Economic Benefit of Noncompliance

An individual renovator, renovation or abatement contractor, training firm, or any other entity that has violated the PRE, RRP, or LBP Activities Rule(s) and Section 409 of TSCA should not profit from their actions.

The Agency's Policy on Civil Penalties (EPA General Enforcement Policy #GM-21), dated February 16, 1984, mandates the recapture of any significant economic benefit (EBN) that accrues to a violator from noncompliance with the law. Economic benefit can result from a violator delaying or avoiding compliance costs or when a violator otherwise realizes illegal profits through its noncompliance. A fundamental premise of the 1984 Policy is that economic incentives for noncompliance are to be eliminated. If, after the penalty is paid, violators still profit by violating the law, there is little incentive to comply. Therefore, enforcement professionals should always evaluate the economic benefit of noncompliance in calculating penalties. Note that economic benefit can not exceed the statutory maximum penalty amount.

An economic benefit component should be calculated and added to the gravity-based penalty component when a violation results in "significant" economic benefit to the violator. "Significant" is defined as an economic benefit that totals more than \$50 per room renovated per

Section 3: Assessing Civil Administrative Penalties

renovation project²⁵ for all applicable violations alleged in the complaint. In the interest of simplifying and expediting an enforcement action, enforcement professionals may use the “rules of thumb” (discussed in Section 3. IV. b., below) to determine if the economic benefit will be significant.

EPA generally will not settle cases for an amount less than the economic benefit of noncompliance. However, the Agency’s 1984 Policy on Civil Penalties explicitly sets out three general areas where settling for less than the economic benefit may be appropriate. Since issuance of the 1984 Policy, the Agency has added a fourth exception for cases where ability to pay is a factor. The four exceptions are:

- The economic benefit component is an insignificant amount (defined for purposes of this policy as less than \$50 per room renovated per renovation project);
- There are compelling public concerns that would not be served by taking a case to trial;
- It is unlikely, based on the facts of the particular case as a whole, that EPA will be able to recover the economic benefit in litigation; and
- The company has documented an inability to pay the total proposed penalty.²⁶

a. Economic Benefit from Delayed Costs and Avoided Costs

Delayed costs are expenditures that have been deferred by the violator’s failure to comply with the requirements. The violator eventually will spend the money to achieve compliance. Delayed costs are either capital costs (i.e., equipment), if any, or one-time non-depreciable costs (e.g., certification fees for renovation firms, tuition fees for courses for certification).

Avoided costs are expenditures that will never be incurred, as in the case of a failure to implement renovation or abatement work practices. In this example, avoided costs include all the costs associated with procuring supplies and implementing engineering controls for dust or using banned practices for LBP removal. Those costs were never and will never be incurred.

b. Calculation of Economic Benefit from Delayed and Avoided Costs

Since 1984, it has been Agency policy to use either the BEN computer model or “rules of thumb” to calculate the economic benefit of noncompliance. The “rules of thumb” are straight-

²⁵ Alternatively, cost information can be derived from the *Economic Analysis for the TSCA Lead Renovation, Repair and Painting Program Final Rule for Target Housing and Child-Occupied Facilities*; Economic and Policy Analysis Branch, Exposure and Technology Division, Office of Pollution Prevention and Toxics. March, 2008.

²⁶ See, Section 3, Item V; Modification of Penalty, for a discussion of ability to pay/continue in business.

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forward methods to calculate economic savings from delayed and avoided compliance expenditures. They are discussed more fully in the Agency's General Enforcement Policy #GM-22, entitled "A Framework for Statute-Specific Approaches to Penalty Assessments," issued on February 16, 1984, at pages 7-9. The "rule of thumb" methodology is available in a Lotus spreadsheet available to EPA enforcement professionals from the Special Litigation and Projects Division of the Office of Civil Enforcement. Enforcement professionals may use the "rules of thumb" whenever the economic benefit penalty is not substantial (generally under \$50 per room renovated per renovation project) and use of an expert financial witness may not be warranted. If the "rules of thumb" yield an amount over \$50 per room renovated per renovation project, the case developer should use the BEN model and/or an expert financial witness to calculate the higher economic benefit penalty. Using the "rules of thumb," the economic benefit of delayed compliance may be estimated at: 5% per year of the delayed one-time capital costs, if any, and/or one-time non-depreciable costs for the period from the date the violation began until compliance was or is expected to be achieved. For avoided annual costs, the "rule of thumb" is the annual expenses avoided until the date compliance is achieved less any tax savings. These rules of thumb do not apply to avoided one-time or avoided capital costs. Enforcement professionals should calculate the economic benefit of avoided one-time and avoided capital costs, if any, by using the BEN model.

The primary purpose of the BEN model is to calculate economic savings for settlement purposes. The model can perform a calculation of economic benefit from delayed or avoided costs based on data inputs, including optional data items and standard values already contained in the program. Enforcement professionals wishing to use the BEN model should take the Basic BEN training course offered by the Special Litigation and Projects Division in cooperation with NETI. Enforcement professionals who have questions while running the model can access the model's help system which contains information on how to: use BEN, understand the data needed, and understand the model's outputs.

The economic benefit component should be calculated for the entire period for which there is evidence of noncompliance, i.e., all time periods for which there is evidence to support the conclusions that the respondent was violating TSCA and thereby gained an economic benefit. Such evidence should be considered in the assessment of the penalty proposed for the violations alleged or proven, up to the statutory maximum for those violations. In certain cases, credible evidence may demonstrate that a respondent received an economic benefit for noncompliance for a period longer than the period of the violations for which a penalty is sought. In such cases, it may be appropriate to consider all of the economic benefit evidence in determining the appropriate penalty for the violations for which the respondent is liable. For example, the economic benefit component of a penalty for failure to comply with work practice standards at a large, multi-year renovation project during which EPA conducted compliance monitoring for only one year should be based on a consideration of the economic benefit gained for the entire period of the renovation, but the total penalty is limited to the statutory maximum for the specific violations alleged and proven.

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In most cases, the violator will have the funds gained through non-compliance available for its continued use or competitive advantage until it pays the penalty. Therefore, for cases in which economic benefit is calculated by using BEN or by a financial expert, the economic benefit should be calculated through the anticipated date a consent agreement would be entered. If the matter goes to hearing, this calculation should be based on a penalty payment date corresponding with the relevant hearing date. It should be noted that the respondent will continue to accrue additional economic benefits after the hearing date, until the assessed penalty is paid. However, there are exceptions for determining the period of economic benefit when using a “rule of thumb.” In those instances, the economic benefit is calculated in the manner described in the first paragraph of this subsection.

IV. Gravity-Based Penalty

Lead poisoning in children, including poisoning in-utero, causes intelligence quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity and behavior problems. In severe cases it may lead to seizures, coma, and death. In as many as 38 million homes in the United States, children’s health is endangered by lead-based paint and/or lead-based paint hazards. Lead in housing and child-occupied facilities remains the most important source of lead exposure for young children and pregnant women. Providing information about the dangers from lead exposures and controlling exposures to lead is the focus of the PRE, RRP, and LBP Activates Rules. The nature and circumstance of a violation of these rules and the extent to which the violation poses a potential for harm are incorporated into the matrices that specify the appropriate gravity-based penalty for that specific or similar violations.

Nature

The TSCA Civil Penalty Guidelines define the nature of a violation as the essential character of the violation, and incorporates the concept of whether the violation is of a “chemical control,” “control-associated data gathering,” or “hazard assessment” nature. With respect to both the RRP and LBP Activities Rules, the requirements are best characterized as “chemical control” in nature because they are aimed at limiting exposure and risk presented by lead-based paint by controlling how lead-based paint is handled by renovators and abatement contractors. In contrast, the requirements of the PRE Rule are best characterized as “hazard assessment” in nature. The PRE Rule requirements are designed to provide owners and occupants of target housing, owners and proprietors of child-occupied facilities, and parents and/or guardians of children under the age of 6 in child-occupied facilities, with information that will allow them to weigh and assess the risks presented by renovations and to take proper precautions to avoid the hazards. This information is vital to occupants of target housing and child-occupied facilities undergoing renovations or abatements to enable them to take proper precautions to avoid unnecessary exposure, especially to children under the age of 6 and pregnant women, that may be created during a renovation or abatement activity. The “nature” of the violation will have a

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direct effect on the measure used to determine the appropriate “circumstance” and “extent” categories are selected on the GBP Matrix in Appendix B.

Circumstance

The term “circumstance” represents the probability of harm resulting from a particular type of violation. The PRE, RRP, and LBP Activities Rules constitute a comprehensive lead-based paint regulatory program. The PRE Rule requirements provide a warning of dangers from lead associated with pending renovations or abatements. The RRP Rule and LBP Activities Rule requirements provide for engineering controls to limit exposures to lead during renovation and abatements and the cleanup procedures to reduce exposures to lead following renovations and abatements. Post-cleanup sampling provides for verification of the effectiveness of the engineering controls and cleanup procedures by testing for residual exposures, if any, to lead.

Therefore, the 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 exposures will be inadequately controlled during renovations, or that residual hazards and exposures will persist after the renovation/abatement work is completed.

Under the TSCA Penalty Guidelines, “Circumstances” are categorized as *High*, *Medium*, and *Low* and each category has two levels, for a total of six Circumstance levels. Consequently, the ERPP ranks potential violations using 6 levels that factor in compliance with the requirements of the PRE, RRP, or LBP Activities Rules. These requirements are associated with lack of knowledge of lead-based paint and lead-based paint hazards, increased exposure to lead or lead hazards, and verification of lead or lead hazard reduction after the actual renovation/abatement work is completed. For example:

1. For a PRE Rule violation, the harm is associated with the failure to provide information on LBP hazards prior to renovations (a “hazard assessment” activity by its nature under this policy). Therefore, the primary circumstance to be considered is the occupant’s ability to assess and weigh, via the PRE Rule notification process, the factors associated with the risk to their health from the planned renovation, so they can take proper precautions to avoid any lead hazards.
2. For a RRP Rule violation of the technical workplace standards, the harm is associated with the failure to control exposures to lead during a renovation (i.e., a “chemical control” activity by its nature under this policy). Therefore, the primary Circumstance to be considered is whether the specific violation has a high, medium, or low probability of impacting human health.

For purposes of this policy, specific violations of the PRE, RRP, and LBP Activities Rules have been categorized as follows:

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Levels 1 and 2:	Violations having a high probability of impacting human health and the environment.
Levels 3 and 4:	Violations having a medium probability of impacting human health and the environment.
Levels 5 and 6:	Violations having a low probability of impacting human health and the environment.

Extent

The term “extent” represents the degree, range, or scope of a violation’s potential for harm. The TSCA Penalty Guidelines provide three “extent” categories: *Major*, *Significant*, and *Minor*. In the context of the PRE, RRP, and LBP Activities Rules, the measure of the “extent” of harm focuses on the overall intent of the rules and the amount of harm the rules are designed to prevent (e.g., serious health effects from childhood lead poisoning). For example, the potential for harm due to the failure of the renovator to provide the *Renovate Right* pamphlet could be considered “Major” if risk factors are high for exposure. In the example of an RRP violation of the technical workplace standards, the harm is associated with the failure to control exposures to lead during a renovation. Therefore, the primary consideration for determining the extent of harm to be considered is whether the specific violation could have a serious or significant or minor impact on human health, with the greatest concern being for the health of a child under 6 years of age and a pregnant woman in target housing. Even in the absence of harm in the form of direct exposures to lead hazards, the gravity component of the penalty should reflect the seriousness of the violation in terms of its effect on the regulatory program. For example, course completion certificates are used by inspectors to identify individuals at worksites who must perform key renovation activities under the RRP Rule. This allows inspectors to efficiently identify those individuals excluded from regulated renovation activities that require certified renovators and to document that each renovation firm employs and uses a certified renovator. TSCA Civil Penalty Guidelines provide the following definitions for the 3 Extent categories:

Major:	Potential for serious damage to human health or the environment.
Significant:	Potential for significant damage to human health or the environment.
Minor:	Potential for lesser amount of damage to human health or the environment.

Under these categories, the appropriate extent category for failure or refusal to comply with the provisions of the Rules is based upon 3 determinable facts:

- The age of any children who occupy target housing;

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- Whether a pregnant woman occupies target housing; and
- Whether a child or children under six had access to the child-occupied facility during renovations/abatement.

Age of child(ren) occupying target housing: Age will be determined by the age of the youngest child residing in the target housing at the time the violation occurred or at the time the renovation occurred. However, any individual can be adversely affected by exposure to lead. Children under the age of 6 are most likely to be adversely affected by the presence of lead-based paint and/or lead-based paint hazards based on habits (particularly hand-to-mouth activity) and vulnerability due to their physical development.

If EPA knows or has reason to believe that a child under the age of 6 is present, then for purposes of proposing a gravity-based penalty, the Major extent category should be used. Where the age of the youngest individual is not known, or a respondent is able to demonstrate to EPA's satisfaction that the youngest individual residing in the target housing at the time of the violation was at least 6 years of age and less than eighteen, then a Significant extent factor should be used. Where a respondent is able to demonstrate to EPA's satisfaction that no individuals younger than eighteen were residing in the target housing at the time of the violation, then a Minor extent factor should be used.

Pregnant women living in target housing: Lead exposure before or during pregnancy can alter fetal development and cause miscarriages. If EPA determines that a pregnant woman occupied the target housing at the time a violation occurred, then a Major extent should be used.

Child-occupied facilities: Child-occupied facilities are, by definition, regularly visited by the same child(ren) under the age of 6. EPA will generally consider failures by renovation/abatement firms to notify parents or guardians of children under 6 as Major in extent. Where a respondent demonstrates to EPA's satisfaction that no children under 6 visited the facility during the renovation (*i.e.*, from the beginning of the renovation through the final cleaning verification), such as during an elementary school's summer break, then an extent factor other than Major should be used.

V. Modification of the Penalty

In addition to the factors discussed in Subsection IV Gravity-Based Penalty above, EPA shall also consider regarding the violations which are the subject of the specific action, with respect to the violator:

- The degree of culpability;
- Any history of prior such violations;

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- The ability to pay/ability to continue to do business; and
- Such other matters as justice may require.²⁷

All appropriate upward adjustments of the gravity-based penalty amount should be made prior to the issuance of the proposed penalty, while downward adjustments²⁸ generally should not be made until after the proposed penalty has been issued, at which time these factors may be considered either during settlement negotiations or litigation.

Degree of Culpability

This factor may be used to increase or decrease the gravity-based penalty. TSCA is a strict liability statute for civil actions, so that culpability is irrelevant to the determination of legal liability. However, this does not render the violator's culpability irrelevant in assessing an appropriate penalty. Knowing or willful violations generally reflect an increased culpability on the part of the violator and may even give rise to criminal liability. The culpability of the violator should be reflected in the amount of the penalty, which may be adjusted upward or downward by up to 25% for this factor. In assessing the degree of culpability, all of the following points should be considered:

- Amount of control the violator had over the events constituting the violation;
- Level of sophistication (knowledge of the regulations) of the violator in dealing with compliance issues; and
- Extent to which the violator knew, or should have known, of the legal requirement that was violated. (For example, was the violator previously informed of the federal requirement to provide the "*Renovate Right*" pamphlet in a prior notice of a local code violation from a local building permit or code office?)

History of Prior Violations

A prior history of violations of the PRE, RRP, or LBP Activities Rules should be reflected in the amount of the penalty. The gravity-based penalty matrices are designed to apply to "first offenders." Where a violator has demonstrated a similar history of "such violations" the Act requires the penalty to be adjusted upward by as much as 25% under the *Guidelines for Assessment of Civil Penalties under Section 16 of TSCA*. The need for such an upward adjustment is usually justified because the violator has not been sufficiently motivated to comply

²⁷ See, 15 U.S.C. § 2615(a)(2)(B). Under unusual circumstances there may be other factors not specified herein that must be considered to reach a just resolution.

²⁸ See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

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with the PRE, RRP, or LBP Activities Rules by the penalty assessed for the previous violation(s).

For the purpose of this policy, EPA interprets “prior such violations” to mean any prior violation(s) of the PRE, RRP, or LBP Activities Rules. For example, the following guidelines apply in evaluating the history of such violations to the PRE Rule:

To constitute a prior violation:

1. The prior violation must have resulted in a consent agreement and final order or consent order (CAFO), consent decree, default judgment (judicial decision), or criminal conviction; and
 2. The resulting order/judgment/conviction was entered or executed within five calendar years prior to the date the subsequent violation occurred. Receipt of payment made to the U.S. Treasury can be used as evidence constituting a prior violation, regardless of whether a respondent admits to the violation and/or enters into a CAFO. Issuance of a NON does not constitute a prior violation for purposes of this policy since no violation is formally found and no opportunity to contest the notice is provided. In order to constitute a prior violation, a prior violation must have resulted in a final order. Violations litigated in Federal courts under the Act’s imminent hazard (§ 7), specific enforcement and seizure (§ 17), and criminal (§ 16(b)) provisions, are also part of a violators history for penalty assessment purposes.
- Two or more corporations or business entities owned by, or affiliated with, the same parent corporation or business entity may not necessarily affect each other’s history (such as with independently-owned franchises) if they are substantially independent of one another in their management and in the functioning of their Boards of Directors. EPA reserves the right to request, obtain, and review all underlying and supporting financial documents that elucidate relationships between entities to verify their accuracy. If the violator fails to provide the necessary information, and the information is not readily available through other sources, then EPA is entitled to rely on the information it does have in its control or possession.
 - In the case of wholly-owned subsidiaries, the parent corporation’s history of violation will apply to all of its subsidiaries. Similarly, the history of violation for a wholly-owned subsidiary will apply to the parent corporation.

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Ability to Pay/Continue in Business

Section 16(a)(2)(B) of TSCA requires that the violator's ability to pay the proposed civil penalty be considered as a statutory factor in determining the amount of the penalty. Absent proof to the contrary, EPA can establish a respondent's ability to pay with circumstantial evidence relating to a company's size and annual revenue. Once this is done, the burden is on the respondent to demonstrate an inability to pay all or a portion of the calculated civil penalty.²⁹

To determine the appropriateness of the proposed penalty in relation to a person's ability to pay, the case team should review publicly-available information, such as Dun and Bradstreet reports, a company's filings with the Securities and Exchange Commission (when appropriate), or other available financial reports before issuing the complaint. In determining the amount of a penalty for a violator when financial information is not publicly-available, relevant facts obtained concerning the number of renovation contracts signed by a violator and the total revenues generated from such renovation contracts may offer insight regarding the violator's ability to pay the penalty.

The Agency will notify the respondent of its right under the statute to have EPA consider its ability to continue in business in determining the amount of the penalty. Any respondent may raise the issue of ability to pay/ability to continue in business in its answer to the complaint or during the course of settlement negotiations. If a respondent raises "inability to pay" as a defense in its answer or in the course of settlement negotiations, the Agency should ask the respondent to present appropriate documentation, such as tax returns and financial statements. The respondent should provide records that conform to generally accepted accounting principles and procedures at its expense. EPA generally should request the following types of information:

- The last three to five years of tax returns;
- Balance sheets;
- Income statements;
- Statements of changes in financial position;

²⁹ Note that under the Environmental Appeals Board ruling in *In re: New Waterbury, LTD*, 5 E.A.D. 529 (EAB 1994), in administrative enforcement actions for violations under statutes that specify ability to pay (which is analogous to ability to continue in business) as a factor to be considered in determining the penalty amount, EPA must prove it adequately considered the appropriateness of the penalty in light of all of the statutory factors. Accordingly, enforcement professionals should be prepared to demonstrate that they considered the respondent's ability to continue in business as well as the other statutory penalty factors and that their recommended penalty is supported by their analysis of those factors. EPA may obtain information regarding a respondent's ability to continue in business from the respondent, independent commercial financial reports, or other credible sources.

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- Statement of operations;
- Information on business and corporate structure;
- Retained earnings statements;
- Loan applications, financing agreements, security agreements;
- Annual and quarterly reports to shareholders and the SEC, including 10K reports; and
- Statements of assets and liabilities.

There are several sources available to assist enforcement professionals in determining a respondent's ability to pay. Enforcement professionals considering a respondent's ability to continue in business should consult "A Framework for Statute-Specific Approaches to Penalty Assessments" (cited above) and EPA General Enforcement Policy PT.2-1 (previously codified as GM-#56), entitled "Guidance on Determining a Violator's Ability to Pay a Civil Penalty" (December 16, 1986). In addition, the Agency has three computer models available to help assess whether violators can afford compliance costs and/or civil penalties: ABEL, INDIPAY and MUNIPAY. INDIPAY analyzes individual taxpayers' claims about inability to pay. MUNIPAY analyzes ability to pay for cities, towns, and villages. These models are designed for settlement purposes only.

ABEL is an EPA computer model that is designed to assess inability to pay claims from corporations and partnerships. The evaluation is based on the firm's excess cash flow. ABEL looks at the money coming into the entity and the money going out. It then looks at whether the excess cash flow is sufficient to cover the firm's environmental responsibilities (i.e., compliance costs) and the proposed civil penalty. Because the program only focuses on a violator's cash flow, there are other sources of revenue that should also be considered to determine if a firm or individual is unable to pay the full penalty. These include:

- Certificates of deposit, money market funds, or other liquid assets;
- Reduction in business expenses such as advertising, entertainment, or compensation of corporate officers;
- Sale or mortgage of non-liquid assets such as company cars, aircraft, or land; and
- Related entities (e.g., the violator is a wholly owned subsidiary of Fortune 500 company).

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A respondent may argue that it cannot afford to pay the proposed penalty even though the penalty as adjusted does not exceed EPA's assessment of its ability to pay. In such cases, EPA may consider a delayed payment schedule calculated in accordance with Agency installment payment guidance and regulations.³⁰ In exceptional circumstances, EPA may also consider further adjustment below the calculated ability to pay.

Finally, EPA will generally not collect a civil penalty that exceeds a violator's ability to pay as evidenced by a detailed tax, accounting, and financial analysis.³¹ However, it is important that the regulated community not choose noncompliance as a way of aiding financially troubled businesses. Therefore, EPA reserves the option, in appropriate circumstances, of seeking a penalty that might exceed the respondent's ability to pay, cause bankruptcy, or result in a respondent's inability to continue in business. Such circumstances may exist where the violations are egregious³² or the violator refuses to pay the penalty. However, if the case is generated out of an EPA regional office, the case file must contain a written explanation, signed by the regional authority duly delegated to issue and settle administrative penalty orders under TSCA, which explains the reasons for exceeding the "ability to pay" guidelines. To ensure full and consistent consideration of penalties that may cause bankruptcy or closure of a business, the regions should consult with the Waste and Chemical Enforcement Division (WCED).³³

Size of Violator: EPA estimated³⁴ that about 394,000 firms supply renovation services nationwide including 82,800 small residential remodeling firms that employ less than 4 people. An additional 1.2 million people are self-employed contractors covered under the RRP Rule, including 194,000 residential remodelers. The general presumption is that small, independent renovation firms lack the level of knowledge and awareness of the LBP rules shared by larger renovators with more employees and more extensive involvement in the renovation industry. Therefore, this factor should be considered when considering economic benefit from noncompliance, ability to pay/continue in business³⁵ for very small firms and the self-employed.

³⁰ See, 40 C.F.R. § 13.18.

³¹ See, TSCA Penalty Guidelines, 45 Fed. Reg. 59775, September 1, 1980. Each financial analysis of a respondent's ability to pay should assume an ability to pay at least a small penalty to acknowledge and reinforce the respondent's obligations to comply with the regulatory requirements cited as violations in the civil administrative complaint.

³² An example of an egregious situation would be where a firm or individual renovator failed to follow any work practice standard, including containment, cleanup, or post-cleanup verification, or used prohibited or restricted practices which resulted in a paint, dust, or soil lead hazard in target housing where a pregnant woman or child under 6 resided or in a child occupied facility.

³³ See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

³⁴ See, Footnote 25, pages 2-16 through 2-20.

³⁵ See, Footnote 31, concerning reinforcing a respondent's obligation to comply.

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Other Factors as Justice May Require

This provision allows an adjustment to the gravity-based component of a penalty for other factors which may arise on a case-by-case basis. The factors discussed in this section may or may not be known at the time a pre-filing letter is sent or a complaint is issued. To the extent that these and other relevant factors become known, adjustments to gravity-based penalties calculated using the factors in Section 3. IV. above, may be made prior to issuing a complaint or at any time thereafter.

Voluntary Disclosure of Violations prior to an Inspection, Investigation, or Tip/Complaint

Violations must be disclosed to EPA before the Agency receives any information about the violations or initiates an inspection or investigation of the firm or individual. No penalty reductions should be given under the Audit Policy, Small Business Policy, or for other voluntary disclosures where the penalties are based on inspections or other investigations.

Audit Policy: A renovator who conducts an audit and voluntarily self-discloses any violations of the PRE, RRP, or LBP Activities Rules under the “Incentives for Self-Policing: Disclosure, Correction and Prevention of Violations” (65 FR 19618, April 11, 2000 (Audit Policy)), may be eligible for a reduction of the gravity-based penalty if all the criteria established in the audit policy are met.³⁶ Reference must be made to that document to determine whether a regulated entity qualifies for this penalty mitigation.

Small Business Policy: A business with fewer than 100 employees may be eligible for a reduction of a gravity-based penalty under the EPA’s Policy on Compliance Incentives for Small Business (Small Business Policy, June 10, 1996).³⁷ Reference must be made to that document to determine whether a regulated entity qualifies for this penalty mitigation.

Voluntary Disclosures: If a firm or individual self-discloses a violation of the PRE, RRP, or LBP Activities Rules but does not qualify for consideration under either the Audit Policy or the Small Business Policy, the proposed civil penalty amount may still be reduced for such voluntary disclosure. To encourage voluntary disclosures of violations, EPA may make a reduction of up to 10% of the gravity-based penalty. An additional reduction up to 10% (for a total reduction of up to 20%) may be given to those violators who report the potential violation to EPA within 30 days of self-discovery of the violation(s).

³⁶ See, Appendix C, Audit Policy

³⁷ See, Appendix C, Small Business Policy.

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Attitude

In cases where a settlement is negotiated prior to a hearing, after other factors have been applied as appropriate, EPA may reduce the resulting adjusted proposed gravity-based penalty up to a total of 30%, but not more than the calculated economic benefit from non-compliance for attitude,³⁸ if the circumstances warrant. In addition to creating an incentive for cooperative behavior during the compliance evaluation and enforcement process, this adjustment factor further reinforces the concept that respondents face a significant risk of higher penalties in litigation than in settlement. The attitude adjustment has 3 components: cooperation, immediate steps taken to comply with the LBP rules, and early settlement:

- EPA may reduce the adjusted proposed penalty up to 10% based on a respondent's cooperation throughout the entire compliance monitoring, case development, and settlement process.
- EPA may reduce the adjusted proposed penalty up to 10% for a respondent's immediate good faith efforts to comply with the violated regulation and the speed and completeness with which it comes into compliance.
- EPA may reduce the adjusted proposed penalty up to 10% if the case is settled before the filing of pre-hearing exchange documents.

Special Circumstances/Extraordinary Adjustments

A case may present other factors that the case team believes justify a further reduction of the penalty.³⁹ For example, a case may have particular litigation strengths or weaknesses that have not been adequately captured in other areas of this ERPP. If the facts of the case or the nature of the violation(s) at issue reduce the strength of the Agency's case, then an additional penalty reduction may be appropriate. In such circumstances, the case team should contact OECA to discuss.⁴⁰ If after careful consideration, the case team determines that an additional reduction of the penalty is warranted, it should ensure the case file includes substantive reasons why the extraordinary reduction of the civil penalty is appropriate, including: (1) why the penalty derived from the TSCA civil penalty matrices and gravity adjustment is inequitable; (2) how all other methods for adjusting or revising the proposed penalty would not adequately resolve the inequity; (3) the manner in which the adjustment of the penalty effectuated the purposes of the Act; and (4) documentation of management concurrence in the extraordinary reduction. EPA should still obtain a penalty sufficient to remove any economic incentive for violating applicable TSCA requirements.

³⁸ See, TSCA Civil Penalty Guidance, attitude of the violator. 45 Fed. Reg. 59773; September 10, 1980

³⁹ See, Appendix C, TSCA Enforcement Policy and Guidance Documents, Memorandum, *Documenting Penalty Calculations and Justifications of EPA Enforcement Actions*, James Strock, August 9, 1990.

⁴⁰ See, Footnote 6. Please consult the current document for any requirement for consultation or concurrence.

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VI. Adjusting Proposed Penalties in Settlement

Certain circumstances may justify adjustment of the proposed penalty. These circumstances may come to EPA's attention when a respondent files an answer to a civil complaint or during pre-filing settlement discussions under the *Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties*, 40 C.F.R. Part 22.

1) Factual Changes

EPA will recalculate the proposed penalty if the respondent can demonstrate that facts material to the initial calculation are different. For example:

- The owner of a property undergoing renovation/abatement provides appropriate documentation⁴¹ that the portion of the property undergoing renovation/abatement is lead-based paint free;
- A renovator or renovation firm provides appropriate documentation that it was renovating/abating a portion of property previously demonstrated to them to be LBP free; or
- A renovator or renovation firm provides appropriate documentation that it had renovated/abated a portion of property subsequently demonstrated to them to be LBP free.

In every case, the burden is on the respondent to raise those new factors which may justify the recalculation, consistent with the new facts.

2) Remittance of Penalty

The statute authorizes the Administrator to compromise, modify or remit, with or without condition, any civil penalty which may be imposed under this section.⁴² EPA has issued a policy on implementing this subsection.⁴³ An example of the application of this policy would be the remittance of a portion of the unadjusted gravity-based penalty developed for violations of the RRP Rule in consideration of acceptance of a suspension or revocation of the violator's LBP certification or training authorization. The violator would still be liable for a penalty for any economic benefit accrued as a result of the violation(s). The terms of the remittance and suspension or revocation must be incorporated into a Compliance Agreement and Final Order.⁴⁴

⁴¹ "Appropriate documentation" or "demonstration" such as reports of lead inspections conducted in accordance with HUD's Guidelines for Assessment of Lead-Based Paint and Lead-Based Paint Hazards.

⁴² See, 15 U.S.C. 2615(a)(2)(C), Section 16(a)(2)(C) of TSCA.

⁴³ See, Appendix C, TSCA Enforcement Policy and Guidance Documents; Memorandum, *Settlement with Conditions*, A. E. Conroy II, November 16, 1983.

⁴⁴ This provision may also be used to remit penalties in exchange for the completion of projects similar to those projects implemented under the Supplemental Environmental Projects program.

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The Chief of the Chemical Risk and Reporting Branch must concur before an offer to remit is made under this ERPP.⁴⁵

3) Supplemental Environmental Projects

Supplemental Environmental Projects (SEPs) are environmentally beneficial projects that a respondent agrees to undertake in settlement of an environmental enforcement action, but that the respondent is not otherwise legally required to perform. In return, the cost of the SEP reduces the amount of the final penalty paid by the respondent. SEPs are only available in negotiated settlements.

EPA has broad discretion to settle cases with appropriate penalties. Evidence of a violator's commitment and ability to perform the proposed SEP is a relevant factor for EPA to consider in establishing an appropriate settlement penalty. The SEP Policy,⁴⁶ defines categories of projects that may qualify as SEPs, procedures for calculating the cost of the SEP, and the percentage of that cost which may be applied as a mitigating factor in establishing an appropriate settlement amount. EPA should ensure that the inclusion of any SEP in settlement of an enforcement action is consistent with the SEP Policy in effect at the time of the settlement. Examples of potential SEPs are listed in Appendix D.

⁴⁵ See, Footnote 6. Please consult the current document for any additional or more recent guidance or requirement for consultation or concurrence.

⁴⁶ See, Appendix C for links to SEP Policies.

APPENDICES

Appendix A Violations and Circumstance Levels

CIRCUMSTANCE LEVEL

⁴⁸ Circumstance Level	Rule Violation
Section I Information Distribution Requirements	
Level 1b	1-Renovation in Dwelling Unit: Failure to provide the owner of the unit with the EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. § 745.84(a)(1)
Level 1b	2-Renovation in Dwelling Unit: Failure to provide the adult occupant of the unit (if not the owner) with the EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. § 745.84(a)(2)
Level 1b	3-Renovation in Common Area: Failure to provide the owner of the multi-family housing with the EPA-approved lead hazard information/pamphlet or to post informational signs pursuant to 40 C.F.R. § 745.84(b)(1)
Level 1b	4-Renovation in Common Area: Failure to notify in writing, or ensure written notification of, each unit of the multi-family housing and make the pamphlet available upon request prior to the start of the renovation, or to post informational signs pursuant to 40 C.F.R. §745.84(b)(2)
Level 1b	5-Renovation in Child-Occupied Facility: Failure to provide the owner of the building in which the child-occupied facility is located with the EPA-approved lead hazard information pamphlet pursuant to 40 C.F.R. §745.84(c)(1)(i)
Level 1b	6-Renovation in Child-Occupied Facility: Failure to provide an adult representative of the child-occupied facility with the pamphlet, if the owner is not the operator of the child-occupied facility, pursuant to 40 C.F.R. §745.84(c)(1)(ii)
Level 1b	7-Renovation in Child-Occupied Facility: Failure to provide the parents and/or guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date, by mailing or hand-delivering the pamphlet and renovation information, or by posting informational signs describing the general nature and locations of the renovation and the anticipated completion date, posted in areas where they can be seen by parents or guardians of the children frequenting the child-occupied facility, and accompanied by a posted copy of the pamphlet or information on how interested parents or guardians can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians, pursuant to 40 C.F.R. §745.84(c)(2)
Level 1b	8-All Renovations: Failure of firms to 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 prepare, to the extent practicable, signs in the primary language of the occupants; and/or to post signs before beginning the renovation and make sure they remain in place and readable until the renovation and the post-renovation cleaning verification have been completed, pursuant to 40 C.F.R. §745.85 (1).
Section II Test Kits	
Level 1a	1-All Renovations: Failure to use an EPA approved dust test kit when determining the presence of lead, pursuant to 40 C.F.R. §745.88 where the test kit result provided a false negative result for lead (i.e., no lead)
Level 5a	2-All Renovations: Failure to use an EPA approved dust test kit when determining the presence of lead, pursuant to 40 C.F.R. §745.88 where the test kit provided an accurate result for the presence of lead

⁴⁸ The matrices in Appendix A on pages B-1 through B-9 contain 2 tiers. Circumstance Level “b” is for PRE Rule requirements which are “hazard assessment” in Nature. Circumstance Level “a” is for LBP Activities Rule and RRP Rule requirements which are “chemical control” in Nature, and all combinations of “a” and “b” violations.
Revised -April, 2013

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Section III Failure to Allow Access to Records, or Refusal of An Inspection	
Level 2a	1-All Renovations: Failure or refusal to permit entry or inspection, pursuant to 40 C.F.R. §745.87(c), which states that such failure or refusal to permit entry or inspection is also a violation of TSCA §15 and TSCA §409
Level 2a	2-Target Housing and Child-occupied Facilities: Failure or refusal to permit entry or inspection, pursuant to 40 C.F.R. §745.235(c), as required by §745.237 and section 11 of TSCA (15 U.S.C. § 2610) is a prohibited act under sections 15 and 409 of TSCA (15 U.S.C. § 2614, 2689)
Section IV Failure to Establish and Maintain Records, Failure or Refusal to Make Records Available	
Level 3a	1-All Renovations: Failure or refusal to establish and maintain records, or to make available such records, pursuant to 40 C.F.R. §745.87(b), which states that such failure or refusal is a violation of TSCA §409
Level 3a	2-Target Housing and Child-occupied Facilities: Failure or refusal to establish maintain, provide, copy, or permit access to records or reports, pursuant to 40 C.F.R. §745.225, § 745.226, and/or §745.227
Section V Acknowledgment and Certification Statement Requirements	
Level 4b	1-Renovation in Dwelling Unit: Failure to obtain, from the owner, a written acknowledgment that the owner has received the pamphlet, pursuant to 40 C.F.R. § 745.84(a)(1)(i) or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.84(a)(1)
Level 4b	2-Renovation in Dwelling Unit: Failure to obtain, from the adult occupant, a written acknowledgment that the adult occupant has received the pamphlet, pursuant to 40 C.F.R. § 745.84(a)(2)(i) or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.84(a)(2)
Level 4b	3-Renovation in Common Area: Failure to obtain, from the owner, a written acknowledgment that the owner has received the pamphlet, or that information signs have been posted, pursuant to 40 C.F.R. § 745.84(b)(1)(i) or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.84(b)(1)
Level 4b	4-Renovation in Common Area: Failure to prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet, pursuant to 40 C.F.R. §745.84(b)(3)
Level 5b	5-Renovation in Common Area: Failure to notify, in writing, the owners and occupants if the scope, locations or expected starting and ending dates of the planned renovation activities change after the initial notification, before the renovator initiates work beyond that which was described in the original notice, pursuant to 40 C.F.R. § 745.84(b)(4)
Level 4b	6-Renovation in Child-Occupied Facility: Failure to obtain, from the owner of the building, a written acknowledgment that the owner has received the pamphlet, or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. §745.84(c)(1)(i)
Level 4b	7-Renovation in Child-Occupied Facility: Failure to obtain from an adult representative of the child-occupied facility, if the operator of the child-occupied facility is not the owner of the building, a written acknowledgment that the operator has received the pamphlet, or failure to obtain a certificate of mailing at least 7 days prior to the renovation, pursuant to 40 C.F.R. § 745.84(c)(1)(ii)
Level 4b	8-Renovation in Child-Occupied Facility: Failure to prepare, sign and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet pursuant to 40 C.F.R. §745.84(c)(3)
Level 5b	9-All Renovations: Failure to include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of the renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature, pursuant to 40 C.F.R. § 745.84(d)(1)
Level 5b	10-All Renovations: Failure to provide the written acknowledgment of receipt on either a separate sheet or as part of any written contract or service agreement for the renovation, and be written in the same language as the text of the contract or agreement or lease or pamphlet, pursuant to 40 C.F.R. § 745.84(d)(2) and (3)

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Section VI Record Retention Requirements	
Level 6a	<u>1-All Renovations:</u> Failure to retain all records necessary to demonstrate compliance with the residential property renovation for a period of 3 years following completion of the renovation activities pursuant to 40 C.F.R. § 745.86
Level 6a	<u>2-All Renovations:</u> Failure of a training program to maintain and make available to EPA upon request, records for a period of 3 years and 6 months, pursuant to 40 C.F.R. § 745.225 (i)
Level 6a	<u>3-Target Housing and Child-occupied Facilities:</u> Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required by §§745.225, 745.226, or 745.227, pursuant to 40 C.F.R. § 745.235 (b)
Section VII Renovation Firm, Renovator and Dust Sampling Technician Certifications and Requirements	
Level 3a ⁴⁹	<u>1-All Renovations:</u> Failure of a firm that performs, offers or claims to perform renovations or dust sampling for compensation to obtain initial certification from EPA, under to 40 C.F.R. §745.89(a) pursuant to 40 CFR § 745.81(a)(2)(ii)
Level 5a	<u>2-All Renovations:</u> Failure of an EPA-certified firm to stop renovations or dust sampling if it does not obtain recertification under 40 CFR § 745.89(a), pursuant to 40 C.F.R. §745.89(b)(1)(iii)
Level 5a	<u>3-All Renovations:</u> Failure of an EPA-certified firm to amend its certification within 90 days of the date a change occurs to information included in the firm's most recent applications, pursuant to 40 C.F.R. §745.89(b). Failure of a firm to halt renovations or dust sampling until its certification is amended, pursuant to 40 C.F.R. §745.89(c)
Level 3a	<u>4-All Renovations:</u> Failure of a firm to carry out its responsibilities during a renovation, under 40 C.F.R. §745.89(d)(1) pursuant to 40 C.F.R. §745.81(a)(2)
Level 3a	<u>5-All Renovations:</u> Failure of a firm to carry out its responsibilities during a renovation, under 40 C.F.R. §745.89(d)(2) pursuant to 40 C.F.R. §745.81(a)(2)
Level 3a	<u>6-All Renovations:</u> Failure of a renovator or dust sampling technician, performing renovator or dust sampling responsibilities under 40 C.F.R. § 745.90(b) or (c) to obtain a course completion certificate (proof of certification) under 40 CFR § 745.90(a)), pursuant to 40 C.F.R. §745.81(a)(3)
Level 4a	<u>7-All Renovations:</u> Failure of a renovator or dust sampling technician, performing renovator or dust sampling responsibilities under 40 C.F.R. § 745.90(b) or (c) to maintain copies of their course completion certificate(s) (proof of certification) at the work site pursuant to 40 CFR § 745.90(b)(7)
Level 1a	<u>8-All Renovations:</u> Failure of an individual to perform responsibilities for ensuring compliance with 40 C.F.R. §745.85 at all renovations to which they are assigned, pursuant to 40 C.F.R. § 745.90(b) or (c)
Level 1a	<u>9-All Renovations:</u> Failure of a dust sampling technician to perform optional dust clearance sampling under §745.85(c), pursuant to 40 C.F.R. § 745.90(c)
Level 5a	<u>10-Target Housing and Child-occupied Facilities:</u> Failure of an EPA-certified individual to stop directing renovations if he or she does not obtain recertification under 40 CFR § 745.90(a)(4), pursuant to 40 C.F.R. §745.81(a)(3)
Level 5a	<u>11-Target Housing and Child-occupied Facilities:</u> Failure of an EPA-certified individual to stop renovations or dust sampling if he or she does not obtain recertification under 40 CFR § 745.90(a)(4), pursuant to 40 C.F.R. §745.81(a)(4)
Section VIII Training Providers: Accreditation and Operation of Training Programs	
Level 3a	<u>1-Target Housing and Child-occupied Facilities:</u> Failure of a training program that performs, offers or claims to provide EPA-accredited lead-based paint activities courses, or renovator or dust sampling courses to apply for accreditation to EPA under 40 CFR §745.225(b) and receive accreditation from EPA under 40 CFR § 225(b)(2) pursuant to 40 CFR § 745.225(a)(3)

⁴⁹ For a self-employed renovator or very small firm (<4 employees), the "Extent" category is usually "minor" for "offering to perform" renovations. For larger firms, such as those acting as general contractors, the "Extent" category is usually "major" because the potential impact is greater in the number and size of renovations.

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Level 3a	<u>2-Target Housing and Child-occupied Facilities:</u> Failure by a training program to employ a training manager who has the requisite experience, education, and/or training, pursuant to 40 C.F.R. §745.225 (c)(1)
Level 3a	<u>3-Target Housing and Child-occupied Facilities:</u> Failure by a training program to designate a qualified principal instructor for each course who has the requisite experience, education, and/or training, pursuant to 40 C.F.R. §745.225(c)(2)
Level 3a	<u>4-Target Housing and Child-occupied Facilities:</u> Failure of a training program's principal instructor and/or training manager to perform the assigned responsibilities, pursuant to 40 C.F.R. §745.225(c)(3)
Level 6a	<u>5-Target Housing and Child-occupied Facilities:</u> Failure of a training program to submit or retain the EPA-recognized documents as evidence that the training managers and principal instructors have the education, work experience, training requirements, or demonstrated experience, pursuant to 40 C.F.R. §745.225(c)(4)
Level 5a	<u>6-Target Housing and Child-occupied Facilities:</u> Failure of a training program to ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities, including the provision of training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed, pursuant to 40 C.F.R. §745.225(c)(5)
Level 3a	<u>7-Target Housing and Child-occupied Facilities:</u> Failure of a training program to provide the training courses that meet the training hour requirements to ensure accreditation in the relevant disciplines, pursuant to 40 C.F.R. §745.225(c)(6)
Level 4a	<u>8-Target Housing and Child-occupied Facilities:</u> Failure of a training program to conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline to evaluate successful completion of the course, pursuant to 40 C.F.R. §745.225(c)(7)
Level 6a	<u>9-Target Housing and Child-occupied Facilities:</u> Failure of a training program to issue unique course completion certificates containing the required information to each individual who passes the training course, pursuant to 40 C.F.R. §745.225(c)(8)
Level 5a	<u>10-Target Housing and Child-occupied Facilities:</u> Failure of a training program to develop and implement a quality control plan that contains at least the minimum elements, pursuant to 40 C.F.R. §745.225(c)(9)
Level 3a	<u>Target Housing and Child-occupied Facilities:</u> Failure of a training program to ensure that courses offered by the training program teach the work practice standards contained in §745.85 or §745.227, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-based paint activities they will be responsible for conducting, pursuant to 40 C.F.R. §745.225(c)(10)
Level 3a	<u>11-Target Housing and Child-occupied Facilities:</u> Failure of a training manager to allow EPA to audit the training program to verify the contents of the application for accreditation as described in paragraph (b) of 40 C.F.R. §745.225, pursuant to 40 C.F.R. §745.225(c)(12)
Level 6a	<u>12-Target Housing and Child-occupied Facilities:</u> Failure of a training manager to provide notification of renovator, dust sampling technician, or renovator, dust sampling technician, or lead-based paint activities offered, pursuant to 40 C.F.R. §745.22 (c)(13)
Level 6a	<u>13-Target Housing and Child-occupied Facilities:</u> Failure by training manager to provide EPA with notification of all lead-based paint activities courses offered at least 7 business days prior to the start date of any lead-based paint activities course, pursuant to 40 C.F.R. §745.225(c)((13)(i)
Level 5a	<u>14-Target Housing and Child-occupied Facilities:</u> Failure of a training manager to provide notification following completion of renovator, dust sampling technician, or lead-based paint activities courses, pursuant to 40 C.F.R. §745.225(c)(14)
Level 3a	<u>15-Target Housing and Child-occupied Facilities:</u> Failure by a training program to meet the minimum training curriculum requirements for each of the disciplines, pursuant to 40 C.F.R. §745.225(d)

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⁴⁸ Circumstance Level	Rule Violation
Section IX Work Practice Standards for Conducting Renovations in Target Housing and Child-Occupied Facilities	
Level 2a	1-Interior Renovations: 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, pursuant to 40 C.F.R. §745.85(a)(2)(i)(A)
Level 2a	2-Interior Renovations: 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, pursuant to 40 C.F.R. §745.85(a)(2)(i)(B)
Level 2a	3-Interior Renovations: Failure by the renovation firm to close windows and doors in the work area, cover doors with plastic sheeting or other impermeable material, and/or cover doors used as an entrance to the work with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area, pursuant to 40 C.F.R. §745.85(a)(2)(i)(C)
Level 2a	4-Interior Renovations: Failure by the renovation firm, before beginning the renovation, 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, whichever is greater, pursuant to 40 C.F.R. §745.85(a)(2)(i)(D)
Level 2a	5-Interior Renovations: Failure by the renovation firm to use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area, pursuant to 40 C.F.R. §745.85(a)(2)(i)(E)
Level 2a	6-Exterior Renovations: Failure by the renovation firm, before beginning the renovation, to close all doors and windows within 20 feet of the renovation, close all doors and windows within 20 feet of the renovation on the same floor as the renovation on multi-story buildings, and/or close all doors and windows on all floors below that are the same horizontal distance from the renovation, pursuant to 40 C.F.R. §745.85(a)(2)(ii)(A)
Level 2a	7-Exterior Renovations: Failure by the renovation firm, before beginning the renovation, to ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area, pursuant to 40 C.F.R. §745.85(a)(2)(ii)(B)
Level 2a	8-Exterior Renovations: 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 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, pursuant to 40 C.F.R. §745.85(a)(2)(ii)(C)
Level 2a	9-Exterior Renovations: Failure by the renovation firm, before beginning the renovations in certain situations, to take extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate other buildings or other areas of the property or migrate to adjacent properties, pursuant to 40 C.F.R. §745.85(a)(2)(ii)(D)
Level 1a	10-Prohibited and restricted practices: Failure to prohibit the use of open-flame burning or torching of lead-based paint during renovations, pursuant to 40 C.F.R. §745.85(a)(3)(i)
Level 1a	11-Prohibited and restricted practices: Failure to prohibit the use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, unless such machines are used with HEPA exhaust control, pursuant to 40 C.F.R. §745.85(a)(3)(ii)
Level 1a	12-Prohibited and restricted practices: Failure to restrict the operating of a heat gun on lead-based paint to temperatures below 1100 degrees Fahrenheit, pursuant to 40 C.F.R. §745.85(a)(3)(iii)
Level 2a	Waste from renovations: Failure to contain waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal and/or failure to cover a chute if it is used to remove waste from the work area, pursuant to 40 C.F.R. §745.85(a)(4)(i)

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Level 2a	<u>13-Waste from renovations</u> : Failure at the conclusion of each work day and/or at the conclusion of the renovation, to ensure that waste that has been collected from renovation activities was stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris, pursuant to 40 C.F.R. §745.85(a)(4)(ii)
Level 2a	<u>14-Waste from renovations</u> : Failure by the renovation firm to contain the waste to prevent release of dust and debris during the transport of waste from renovation activities, pursuant to 40 C.F.R. §745.85(a)(4)(iii)
Level 1a	<u>15-Cleaning the work area</u> : Failure by the renovation firm to clean the work area until no dust, debris or residue remains after the renovation has been completed, pursuant to 40 C.F.R. §745.85(a)(5)
Level 1a	<u>16-Cleaning the work area</u> : Failure by the renovation firm to collect all paint chips and debris and seal the material in a heavy-duty bag without dispersing any of it, pursuant to 40 C.F.R. §745.85(a)(5)(i)(A)
Level 1a	<u>17-Cleaning the work area</u> : Failure by the renovation firm to remove the protective sheeting by misting the sheeting before folding it, folding the dirty side inward, and/or either taping shut to seal or sealing it in heavy-duty bags, pursuant to 40 C.F.R. §745.85(a)(5)(i)(B)
Level 1a	<u>18-Cleaning the work area</u> : Failure by the renovation firm to keep in place the plastic sheeting used to isolate contaminated rooms from non-contaminated rooms until after the cleaning and removal of other sheeting, pursuant to 40 C.F.R. §745.85(a)(5)(i)(B)
Level 1a	<u>19-Cleaning the work area</u> : Failure by the renovation firm to dispose of the plastic sheeting, used as occupant protection at the renovation site, as waste, pursuant to 40 C.F.R. §745.85(a)(5)(i)(B).
Level 1a	<u>20-Cleaning the work area</u> : Failure by the renovation firm to clean all objects and surfaces in the work area and within 2 feet of the work area, cleaning from higher to lower, pursuant to 40 C.F.R. §745.85(a)(5)(ii)
Level 1a	<u>21-Cleaning the work area</u> : Failure by the renovation firm to clean walls in the work area, starting at the ceiling and working down to the floor, by either vacuuming with a HEPA vacuum or wiping with a damp cloth, pursuant to 40 C.F.R. §745.85(a)(5)(ii)(A)
Level 1a	<u>22-Cleaning the work area</u> : 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 and/or failure to use a HEPA vacuum equipped with a beater bar when vacuuming carpets and rugs, pursuant to 40 C.F.R. §745.85(a)(5)(ii)(B).
Level 1a	<u>23-Cleaning the work area</u> : Failure by the renovation firm to wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth and/or failure to mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the 2-bucket mopping method, or using a wet mopping system, pursuant to 40 C.F.R. §745.85(a)(5)(ii)(C)
Level 1a	<u>24-Standards for post-renovation cleaning verification</u> : Failure by a renovator to perform a visual inspection of the interior work area to determine whether dust, debris or residue is still present, to remove dust, debris or residue by re-cleaning if necessary, and/or perform another visual inspection, pursuant to 40 C.F.R. §745.85(b)(1)(i)
Level 1a	<u>25-Standards for post-renovation cleaning verification</u> : Failure by a renovator to verify that each interior windowsill in the work area has been adequately cleaned using a disposable cleaning cloth(s) compared to the cleaning verification card following the prescribed procedures, pursuant to 40 C.F.R. §745.85 (b)(1)(ii) (A) or failure by a certified renovator to arrange for the collection dust clearance samples as part of optional dust clearance testing, pursuant to 40 C.F.R. §745.85(b)(1)(ii)(A)
Level 1a	<u>26-Standards for post-renovation cleaning verification</u> : Failure by a renovator to verify that each interior floor in the work area has been adequately cleaned using a disposable cleaning cloth(s) compared to the cleaning verification card following the prescribed procedures pursuant to 40 C.F.R. §745.85 (b)(1)(ii) (B) or failure by a certified renovator to arrange for the collection dust clearance samples as part of optional dust clearance testing, pursuant to 40 C.F.R. §745.85(b)(1)(ii)(B)
Level 1a	<u>27-Standards for post-renovation cleaning verification</u> : Failure by a renovator to wait until interior work area passes post-renovation cleaning verification before removing signs, pursuant to 40 C.F.R. §745.85(b)(1)(iii)

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⁴⁸ Circumstance Level	Rule Violation
Level 1a	<u>28-Standards for post-renovation cleaning verification:</u> Failure by a renovator to perform a visual inspection of the exterior work area to determine whether dust, debris or residue is still present, to remove dust, debris or residue by re-cleaning if necessary, and/or perform another visual inspection, pursuant to 40 C.F.R. §745.85(b)(2)
Level 1a	<u>29-Standards for post-renovation cleaning verification:</u> Failure by a renovator to wait until exterior work area passes visual inspection before removing signs, pursuant to 40 C.F.R. §745.85(b)(2)
Level 1a	<u>30-Standards for post-renovation cleaning verification:</u> Failure by a renovation firm to arrange for the performance of optional dust clearance testing at the conclusion of the renovation if required to do so by the person contracting for the renovation, a Federal, State, Territorial, Tribal, or local law or regulation, pursuant to 40 C.F.R. §745.85(c)
Level 1a	<u>31-Standards for post-renovation cleaning verification:</u> Failure to have the optional dust clearance testing performed by a certified inspector, risk assessor or dust sampling technician at the conclusion of the renovation, pursuant to 40 C.F.R. §745.85(c)(2)
Level 1a	<u>32-Standards for post-renovation cleaning verification:</u> Failure by a renovation firm to re-clean the work area until dust clearance results are below clearance standards, pursuant to 40 C.F.R. §745.85(c)(3)
Section X Work Practice Standards for Conducting Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities	
Level 1a	<u>1-Target Housing and Child-occupied Facilities:</u> Failure to perform all lead-based paint activities pursuant to the work practice standards, appropriate requirements, methodologies and clearance levels specified and referenced, pursuant to 40 C.F.R. §745.227(a)(1)
Level 2a	<u>2- Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead-based paint activity described by the certified individual as an inspection, lead-hazard screen, risk assessment or abatement, is performed by a certified individual in compliance with the appropriate requirements, pursuant to 40 C.F.R. §745.227(a)(2)
Level 2a	<u>3-Target Housing and Child-occupied Facilities:</u> Failure to ensure that an inspection is conducted only by a person certified by EPA as an inspector or risk assessor and, if conducted, must be conducted according to the prescribed procedures, pursuant to 40 C.F.R. §745.227(b)(1)
Level 1a	<u>4-Target Housing and Child-occupied Facilities:</u> Failure in an inspection to select locations according to documented methodologies to be tested for the presence of lead-based paint, pursuant to 40 C.F.R. §745.227(b)(2)
Level 3a	<u>5-Target Housing and Child-occupied Facilities:</u> Failure to test for lead-based paint each interior and/or exterior component with a distinct painting history in a residential dwelling and/or child-occupied facility, pursuant to 40 C.F.R. §745.227(b)(2)(i)
Level 3a	<u>6-Target Housing and Child-occupied Facilities:</u> Failure to test for lead-based paint each interior and/or exterior component with a distinct painting history in a multi-family dwelling, pursuant to 40 C.F.R. §745.227(b)(2)(ii)
Level 5a	<u>7-Target Housing and Child-occupied Facilities:</u> Failure to ensure that paint sampled for analysis to determine the presence of lead was conducted using documented methodologies which incorporate adequate quality control procedures, pursuant to 40 C.F.R. §745.227(b)(3)(i)
Level 3a	<u>8- Target Housing and Child-occupied Facilities:</u> Failure to ensure that all collected paint chip samples were analyzed according to 40 C.F.R. §745.227(f) to determine if they contain detectable levels of lead that can be quantified numerically, pursuant to 40 C.F.R. §745.227(b)(3)(ii)
Level 3a	<u>9- Target Housing and Child-occupied Facilities:</u> Failure of an inspector or risk assessor to prepare an inspection report that includes the required information, pursuant to 40 C.F.R. §745.227(b)(4)
Level 2a	<u>10-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen is conducted only by a person certified by EPA as a risk assessor, pursuant to 40 C.F.R. §745.227(c)(1)
Level 3a	<u>11- Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes the collection of background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under, pursuant to 40 C.F.R. §745.227(c)(2)(i)

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Level 3a	<u>12-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes a visual inspection to determine the presence of deteriorated paint, pursuant to 40 C.F.R. §745.227(c)(2)(ii)(A)
Level 3a	<u>13-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes a visual inspection to locate at least two dust samples performed according to the prescribed methodologies, pursuant to 40 C.F.R. §745.227(c)(2)(ii)(B)
Level 3a	<u>14- Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes the collection and analysis of dust samples according to the prescribed methodologies, pursuant to 40 C.F.R. §745.227(c)(3)
Level 3	<u>15-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes the collection and analysis of paint samples according to the prescribed methodologies, pursuant to 40 C.F.R. §745.227(c)(4)
Level 3a	<u>16-Target Housing and Child-occupied Facilities:</u> Failure of a risk assessor to prepare a lead hazard screen report that includes the required information, pursuant to 40 C.F.R. §745.227(c)(5)
Level 3a	<u>17-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a risk assessment is conducted only by a person certified by EPA as a risk assessor, pursuant to 40 C.F.R. §745.227(d)(1)
Level 3a	<u>8-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a risk assessment includes a visual inspection of the residential dwelling or child-occupied facility to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards, pursuant to 40 C.F.R. §745.227(d)(2)
Level 3a	<u>19-Target Housing and Child-occupied Facilities:</u> Failure to ensure that a lead hazard screen includes the collection of background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under, pursuant to 40 C.F.R. §745.227(d)(3)
Level 3a	<u>20-Target Housing and Child-occupied Facilities:</u> Failure to test for the presence of lead on each surface determined to have a distinct painting history, pursuant to 40 C.F.R. §745.227(d)(4)
Level 3a	<u>21-Residential Dwellings:</u> Failure to collect and analyze for lead concentration dust samples (either composite or single-surface samples) from the interior window sill(s) and floor(s) in all living areas where one or more children, age 6 and under, are most likely to come into contact with dust, pursuant to 40 C.F.R. §745.227(d)(5)
Level 3a	<u>22-Multi-family Dwellings and Child-occupied Facilities:</u> Failure to collect and analyze interior window sill and floor dust samples (either composite or single-surface samples) for lead concentration from the prescribed locations, pursuant to 40 C.F.R. §745.227(d)(6)
Level 3a	<u>23-Child-occupied Facilities:</u> Failure to collect and analyze interior window sill and floor dust samples (either composite or single-surface samples) for lead concentration in each room, hallway or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility pursuant to 40 C.F.R. §745.227(d)(7)
Level 3a	<u>24-Target Housing and Child-occupied Facilities:</u> Failure to collect and analyze soil samples for lead concentrations in the prescribed locations, pursuant to 40 C.F.R. §745.227(d)(8)
Level 3a	<u>25-Target Housing and Child-occupied Facilities:</u> Failure to conduct all paint, dust, or soil sampling or testing using documented methodologies that incorporate adequate quality control procedures, pursuant to 40 C.F.R. §745.227(d)(9)
Level 3a	<u>26-Target Housing and Child-occupied Facilities:</u> Failure to analyze any collected paint chip, dust, or soil samples according to 40 C.F.R. §745.227(f) to determine if they contain detectable levels of lead that can be quantified numerically, pursuant to 40 C.F.R. §745.227(d)(10)
Level 3a	<u>27-Target Housing and Child-occupied Facilities:</u> Failure of risk assessor to prepare a risk assessment report that includes the required information, pursuant to 40 C.F.R. §745.227(d)(11)
Level 1a	<u>28-Target Housing and Child-occupied Facilities:</u> Failure to ensure that an abatement is conducted only by a person certified by EPA, and, if conducted, is conducted according to the prescribed procedures, pursuant to 40 C.F.R. §745.227(e)(1)

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Level 3a	<u>29- Target Housing and Child-occupied Facilities:</u> Failure of a supervisor to be onsite for each abatement project during all work site preparation, during the post-abatement cleanup of work areas, and to be onsite at other times during the abatement or available by telephone, pager or answering service and able to be present at the work site in no more than 2 hours, pursuant to 40 C.F.R. §745.227(e)(2)
Level 3a	<u>30- Target Housing and Child-occupied Facilities:</u> Failure of a supervisor and the certified firm employing that supervisor to ensure that all abatement activities are conducted according to the requirements of 40 C.F.R. §745.227(e) and all other Federal, State and local requirements, pursuant to 40 C.F.R. §745.227(e)(3)
Level 3a	<u>31-Target Housing and Child-occupied Facilities:</u> Failure of a renovation firm to notify EPA of lead-based paint abatement activities or to update notification as prescribed and by the designated deadline, pursuant to 40 C.F.R. §745.227(e)(4)(i-v)
Level 3a	<u>32-Target Housing and Child-occupied Facilities:</u> Failure of a renovation firm to include the designated information in each notification, pursuant to 40 C.F.R. §745.227(e)(4)(vi)
Level 2a	<u>33-Target Housing and Child-occupied Facilities:</u> Failure by a certified firm to accomplish written or electronic notification via one of the prescribed methods, pursuant to 40 C.F.R. §745.227(e)(4)(vii)
Level 4a	<u>34-Target Housing and Child-occupied Facilities:</u> Failure of a renovation firm to begin lead-based paint abatement activities on the date and at the location specified in either the original or updated notification, pursuant to 40 C.F.R. §745.227(e)(4)(viii)
Level 2a	<u>35-Target Housing and Child-occupied Facilities:</u> Failure of a renovation firm or individual to notify EPA before engaging in lead-based paint abatement activities defined in 40 C.F.R. §745.223, pursuant to 40 C.F.R. §745.227(e)(4)(ix)
Level 3a	<u>36-Target Housing and Child-occupied Facilities:</u> Failure of a renovation firm or individual to develop a written occupant protection plan for all abatement projects and in accordance with the prescribed procedures, pursuant to 40 C.F.R. §745.227(e)(5)
Level 2a	<u>37-Target Housing and Child-occupied Facilities:</u> Failure to prohibit the use of open-flame burning or torching of lead-based paint during abatement activities pursuant to 40 C.F.R. §745.227(e)(6)(i)
Level 2a	<u>38-Target Housing and Child-occupied Facilities:</u> Failure to prohibit the use of machines that remove lead-based paint through sanding, grinding, abrasive blasting, or sandblasting, unless such machines are used with HEPA exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency, pursuant to 40 C.F.R. §745.227(e)(6)(ii)
Level 2a	<u>39-Target Housing and Child-occupied Facilities:</u> Failure to prohibit the dry scraping of lead-based paint unless it is used in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than 6 square feet in any one room, hallway, or stairwell or totaling no more than 20 square feet on exterior surfaces, pursuant to 40 C.F.R. §745.227(e)(6)(iii)
Level 2a	<u>40-Target Housing and Child-occupied Facilities:</u> Failure to restrict the operating of a heat gun on lead-based paint at temperatures below 1100 degrees Fahrenheit, pursuant to 40 C.F.R. §745.227(e)(6)(iv)
Level 3a	<u>41-Target Housing and Child-occupied Facilities:</u> Failure to conduct soil abatement, when necessary, according to the prescribed methods, pursuant to 40 C.F.R. §745.227(e)(7)
Level 3a	<u>42-Target Housing and Child-occupied Facilities:</u> Failure to have a certified inspector or risk assessor perform the post-abatement clearance procedures, pursuant to 40 C.F.R. §745.227(e)(8)
Level 3a	<u>43-Target Housing and Child-occupied Facilities:</u> Failure by an inspector or risk assessor to perform a visual inspection after abatement to determine if deteriorated painted surfaces and/or visible amounts of dust, debris or residue are still present and to remove any hazards that still remain, pursuant to 40 C.F.R. §745.227(e)(8)(i)
Level 4a	<u>44-Target Housing and Child-occupied Facilities:</u> Failure to wait until the required visual inspection and any necessary post-abatement cleanups are completed before performing clearance sampling for lead in dust, pursuant to 40 C.F.R. §745.227(e)(8)(ii)
Level 1a	<u>45-Target Housing and Child-occupied Facilities:</u> Failure to take dust samples for clearance purposes using documented methodologies that incorporate adequate quality control procedures, pursuant to 40 C.F.R. §745.227(e)(8)(iii)

Appendix A Violations and Circumstance Levels

⁴⁸ Circumstance Level	Rule Violation
Level 4a	<u>46-Target Housing and Child-occupied Facilities:</u> Failure to wait a minimum of 1 hour after completion of final post-abatement cleanup activities to collect dust samples for clearance purposes, pursuant to 40 C.F.R. §745.227(e)(8)(iv)
Level 4a	<u>47-Target Housing and Child-occupied Facilities:</u> Failure to collect the required dust samples from the prescribed surfaces in the designated rooms after conducting an abatement with containment between abated and unabated areas, pursuant to 40 C.F.R. §745.227(e)(8)(v)(A)
Level 4a	<u>48-Target Housing and Child-occupied Facilities:</u> Failure to collect the required dust samples from the prescribed surfaces in the designated rooms after conducting an abatement with no containment, pursuant to 40 C.F.R. §745.227(e)(8)(v)(B)
Level 4a	<u>49-Target Housing and Child-occupied Facilities:</u> Failure to conduct a visual inspection and clean horizontal, outdoor surfaces of visible dust and debris, perform visual inspection for paint chips on the dripline and remove and properly dispose of any paint chips found following an exterior paint abatement, pursuant to 40 C.F.R. §745.227(e)(8)(v)(C)
Level 4a	<u>50-Target Housing and Child-occupied Facilities:</u> Failure to select the rooms, hallways or stairwells for sampling according to documented methodologies, pursuant to 40 C.F.R. §745.227(e)(8)(vi)
Level 3a	<u>51-Target Housing and Child-occupied Facilities:</u> Failure by an inspector or risk assessor to compare the residual lead level from dust samples with clearance levels to determine if level exceeds the applicable clearance level, pursuant to 40 C.F.R. §745.227(e)(8)(vii)
Level 2a	<u>52-Target Housing and Child-occupied Facilities:</u> Failure by an inspector or risk assessor to reclean and retest the surface of components that were determined to have failed clearance testing after abatement, pursuant to 40 C.F.R. §745.227(e)(8)(vii)
Level 3a	<u>53-Target Housing and Child-occupied Facilities:</u> Failure to use the standard clearance levels for lead in dust of 40 µg/ft ² for floors, 250 µg/ft ² for interior window sills, and 400 µg/ft ² for window troughs to determine if a level in a sample exceeds the applicable clearance level, pursuant to 40 C.F.R. §745.227(e)(8)(viii)
Level 4a	<u>54-Target Housing and Child-occupied Facilities:</u> Failure to perform random sampling in a multi-family dwelling with similarly constructed and maintained residential dwellings according to the prescribed methods, pursuant to 40 C.F.R. §745.227(e)(9)
Level 4a	<u>55-Target Housing and Child-occupied Facilities:</u> Failure by a supervisor or project designer to prepare an abatement report that includes the required information, pursuant to 40 C.F.R. §745.227(e)(10)
Level 3a	<u>56-Target Housing and Child-occupied Facilities:</u> Failure to ensure that all paint chip, dust, or soil samples obtained are collected by a certified risk assessor or paint inspector and analyzed by an EPA-recognized laboratory, pursuant to 40 C.F.R. §745.227(f)
Level 5a	<u>57-Target Housing and Child-occupied Facilities:</u> Failure to limit composite dust sampling to only those situations specified, pursuant to 40 C.F.R. §745.227(g)
Level 3a	<u>58-Target Housing and Child-occupied Facilities:</u> Failure to make a determination on the presence of lead-based paint, pursuant to 40 C.F.R. §745.227(h)
Level 1a	<u>59-Target Housing and Child-occupied Facilities:</u> Failure of a firm that performs, offers or claims to perform renovations or dust sampling for compensation to obtain initial certification from EPA, under to 40 C.F.R. §745.226 pursuant to 40 CFR § 745.233
Section XI Lead-Based Paint Risk Assessments	
Level 2a	1-Failure of a person performing a risk assessment to be certified by EPA as a risk assessor, pursuant to 40 C.F.R. §745.227(d)(1)
Level 2a	2-Failure to conduct visual inspection for risk assessment or child-occupied facility to locate existence of deteriorated paint, assess extent and causes of deterioration, and other potential lead-based paint hazards, pursuant to 40 C.F.R. §745.227(d)(2)

Appendix B

Gravity-Based Penalty Matrices

GRAVITY-BASED PENALTY MATRIX FOR PRE, RRP, & LBP ACTIVITIES RULES⁴⁹

		Extent		
		MAJOR	SIGNIFICANT	MINOR
Target Housing:	one or more occupants under age 6 and/or pregnant woman	no information about age of the youngest occupant, or one or more occupants between ages of 6 and 17	no occupants under age 18	
Child-Occupied Facilities:	one or more occupants under age 6 (by definition, a child-occupied facility is regularly visited by one or more children under 6)		renovation activities were completed during a period when children did not access the facility (<i>e.g.</i> , as summer vacation) and there is no continuity of enrollment (<i>i.e.</i> , the same children are not returning after the break). ⁵⁰	
For Violations Occurring On or Before 1/12/2009: ⁵¹				
Circumstance				
HIGH	Level 1a	\$ 32,500	\$ 21,930	\$ 6,500
	Level 1b	\$ 11,000	\$ 7,740	\$ 2,580
	Level 2a	\$ 25,800	\$ 16,770	\$ 3,870
	Level 2b	\$ 10,320	\$ 6,450	\$ 1,550
MEDIUM	Level 3a	\$ 19,350	\$ 12,900	\$ 1,940
	Level 3b	\$ 7,740	\$ 5,160	\$ 780
	Level 4a	\$ 12,900	\$ 7,740	\$ 1,290
	Level 4b	\$ 5,160	\$ 3,220	\$ 520
LOW	Level 5a	\$ 6,450	\$ 3,870	\$ 650
	Level 5b	\$ 2,680	\$ 1,800	\$ 260
	Level 6a	\$ 650	\$ 1,680	\$ 260
	Level 6b	\$ 1,290	\$ 640	\$ 130

⁴⁹ Since the "nature" of violations for training providers is unique, separate matrices are provided on page B3.

⁵⁰ In a situation where there is "no continuity of enrollment," there are no children's parents to whom information can be provided; therefore, information must only be provided to the owner and operator of the child-occupied facility.

⁵¹ The maximum civil monetary penalty for TSCA is \$32,500 and \$11,000, respectively, for violations occurring after 3/15/2004 through 1/12/2009.

Appendix B

Gravity-Based Penalty Matrices

		Extent		
		MAJOR	SIGNIFICANT	MINOR
Target Housing:		one or more occupants under age 6 and/or pregnant woman	no information about age of the youngest occupant, or one or more occupants between ages of 6 and 17	no occupants under age 18
Child-Occupied Facilities:		one or more occupants under age 6 (by definition, a child-occupied facility is regularly visited by one or more children under 6)		renovation activities were completed during a period when children did not access the facility (<i>e.g.</i> , as summer vacation) and there is no continuity of enrollment (<i>i.e.</i> , the same children are not returning after the break). ⁵²
For Violations Occurring After 1/12/2009: ⁵³				
HIGH	Level 1a	\$ 37,500	\$ 25,500	\$ 7,500
	Level 1b	\$ 16,000	\$ 8,500	\$ 2,840
	Level 2a	\$ 30,000	\$ 20,400	\$ 6,000
	Level 2b	\$ 11,340	\$ 7,090	\$ 1,710
MEDIUM	Level 3a	\$ 22,500	\$ 15,300	\$ 4,500
	Level 3b	\$ 8,500	\$ 5,670	\$ 850
	Level 4a	\$ 15,000	\$ 10,200	\$ 3,000
	Level 4b	\$ 5,670	\$ 3,540	\$ 580
LOW	Level 5a	\$ 7,500	\$ 5,100	\$ 1,500
	Level 5b	\$ 2,840	\$ 1,850	\$ 290
	Level 6a	\$ 3,000	\$ 2,040	\$ 600
	Level 6b	\$ 1,420	\$ 710	\$ 150

⁵² In a situation where there is "no continuity of enrollment," there are no children's parents to whom information can be provided; therefore, information must only be provided to the owner and operator of the child-occupied facility.

⁵³ The maximum civil monetary penalty for TSCA is \$37,500 and \$16,000, respectively, for violations occurring after 1/12/2009. Adjustments to the individual "a" levels below the maximum were made using the ratios established in the TSCA Penalty Guidelines matrix (45 Fed. Reg. 59771, September 10, 1980).

Appendix B

Gravity-Based Penalty Matrices

GRAVITY-BASED PENALTY MATRIX FOR TRAINING VIOLATIONS

		Extent		
		MAJOR	SIGNIFICANT	MINOR
Potential that the trainer's violations will affect human health by impairing the student's ability to learn:		eleven or more students attending class where violations occurred	six to ten students attending class where violations occurred	one to five students attending class where violations occurred
For Violations Occurring On or Before 1/12/2009: ⁵⁴				
Circumstance				
HIGH	Level 1a	\$ 32,500	\$ 21,930	\$ 6,450
	Level 2a	\$ 25,800	\$ 16,770	\$ 3,870
MEDIUM	Level 3a	\$ 19,350	\$ 12,900	\$ 1,940
	Level 4a	\$ 12,900	\$ 7,740	\$ 1,290
LOW	Level 5a	\$ 6,450	\$ 3,870	\$ 640
	Level 6a	\$ 2,580	\$ 1,680	\$ 260

		Extent		
		MAJOR	SIGNIFICANT	MINOR
Potential that the trainer's violations will affect human health by impairing the students ability to learn:		eleven or more students attending class where violations occurred	six to ten students attending class where violations occurred	one to five students attending class where violations occurred
For Violations Occurring After 1/12/2009: ⁵⁵				
HIGH	Level 1a	\$ 37,500	\$ 25,500	\$ 7,500
	Level 2a	\$ 30,000	\$ 20,400	\$ 6,000
MEDIUM	Level 3a	\$ 22,500	\$ 15,300	\$ 4,500
	Level 4a	\$ 15,000	\$ 10,200	\$ 3,000
LOW	Level 5a	\$ 7,500	\$ 5,100	\$ 1,500
	Level 6a	\$ 3,000	\$ 2,040	\$ 600

⁵⁴ The maximum civil monetary penalty is \$32,500 for violations occurring after 3/15/2004 through 1/12/2009.

⁵⁵ The maximum civil monetary penalty is \$37,500 for violations occurring after 1/12/2009. Adjustments to the individual levels below the maximum were made using the ratios established in the TSCA Penalty Guidelines matrix (45 Fed. Reg. 59771, September 10, 1980).

Appendix C Internet References for Policy Documents

The EPA website for information on the TSCA 406(b) Pre-Renovation Education Rule is:
<http://www.epa.gov/lead/pubs/leadrenf.htm>

The EPA website also maintains copies of applicable policies and other useful information:

EPA Home Page: <http://www.epa.gov>

Compliance and Enforcement Home Page: <http://www.epa.gov/compliance/>

TSCA Enforcement Policy and Guidance Documents:
<http://cfpub.epa.gov/compliance/resources/policies/civil/tsca/>

Supplemental Environmental Projects:
<http://cfpub.epa.gov/compliance/resources/policies/civil/seps/>

Final Supplemental Environmental Projects Policy (1998):
<http://www.epa.gov/compliance/resources/policies/civil/seps/fnl-sup-hermn-mem.pdf>

Treatment of Lead-based Paint Abatement Work as a Supplemental Environmental Project in Administrative Settlements (Jan 2004):
<http://www.epa.gov/compliance/resources/policies/civil/seps/leadbasedabatement-sep012204.pdf>

Audit Policy: <http://www.epa.gov/compliance/incentives/auditing/auditpolicy.html>

Small Business Policy:
<http://www.epa.gov/compliance/incentives/smallbusiness/index.html>

Redelegation of Authority:
<http://www.epa.gov/compliance/resources/policies/civil/rcra/hqregenfcases-mem.pdf>

HUD Technical Guidelines for the Evaluation and Control of Lead Based Paint Hazards in Housing: <http://www.hud.gov/offices/lead/lbp/hudguidelines/index.cfm>

Documenting Penalty Calculations and Justifications of EPA Enforcement Actions, (Aug 1990):
<http://www.epa.gov/compliance/resources/policies/civil/rcra/caljus-strock-mem.pdf>

Amendments to Penalty Policies to Implement Penalty Inflation Rule 2008
<http://cfpub.epa.gov/compliance/resources/policies/civil/penalty/>

Appendix D List of Supplemental Environmental Projects (SEPs)

The following list of potential Supplemental Environmental Projects (SEPs) is not exhaustive, but is intended to offer some examples.⁵⁶

- Abatement of lead-based paint and/or lead-based paint hazards in target housing or child-occupied facilities in compliance with requirements of 40 C.F.R. § 227(e).
- Renovation (such as window or door replacement) that includes removal of components containing lead-based paint and/or lead-based paint hazards from target housing or child-occupied facilities, followed by clearance testing as defined in 40 C.F.R. § 227(e)(8).
- Risk assessment of target housing or child-occupied facilities to identify lead-based paint hazards, followed by correction of any hazards identified.
- Purchase of an XRF for a local health organization.
- Blood-lead level screening and/or treatment for children where Medicaid coverage is not available. (Blood-lead level screening and/or treatment for children underserved by Medicaid may also be appropriate, with approval from the Special Litigation and Projects Division in OECA.)
- Purchase and operate a mobile health clinic, including outfitting the mobile units (*e.g.*, blood lead level testing and treatment for children in public housing).
- Purchase and donate lead health screening equipment to schools, public health departments, clinics, *etc.*
- Provide free lab tests for lead in dust, soil and paint chip samples; make testing available to low-income homeowners, small rental property owners, and community-based organizations.

⁵⁶ Whether the Agency decides to accept a proposed SEP as part of a settlement, and the amount of any penalty mitigation that may be given for a particular SEP, is purely within EPA's discretion. (*See, Supplemental Environmental Projects Policy, May 1, 1998, page 3.*)

EXHIBIT E

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the matter of:	:	
	:	
RFN Enterprise, Inc.	:	U.S. EPA Docket No.
428 Foxridge Drive	:	TSCA-03-2017-0106
Leesburg, VA 20175	:	
Respondent,	:	Proceeding Under Section 16(a) of the
	:	Toxic Substances Control Act
5338 Reisterstown Rd.	:	15 U.S.C. § 2615(a).
Baltimore, MD 21215	:	
Target Housing.	:	
	:	

DECLARATION OF CRAIG YUSSEN

I, Craig Yussen, hereby declare that:

1. I am currently employed as a Chemical Engineer and credentialed Compliance Officer with the Toxics Programs Branch of the Land and Chemicals Division, U.S. EPA, Region III. I have been employed in this capacity since 1990.
2. As a Chemical Engineer and credentialed Compliance Officer with the Toxics Programs Branch, my duties include conducting investigative work to determine compliance with EPA's regulations at 40 C.F.R. Part 745, Subparts E and F, including the Pre-Renovation Education ("PRE") Rule; the Renovation, Repair and Painting ("RRP") Rule and the Disclosure Rule. As part of my investigative work, I have reviewed approximately 75 investigative case files under the RRP and Disclosure Rules and approximately 60-70 files for PRE Rule cases. In addition, I have been involved in the preparation and enforcement of many administrative enforcement actions pursuant to the RRP Rule, including approximately 10 administrative complaints and 30 settlements and more than 30 notice of noncompliance letters.

3. My involvement with the case of RFN started on approximately July 31, 2013, after Region III received an inspection report from the Maryland Department of the Environment (“MDE”) detailing the results of an inspection of a renovation performed by RFN at 5338 Reisterstown Road, Baltimore, MD 21215 (the “Target Facility”) and, as noted in ¶ 4, after EPA followed up with its own investigation.
4. Based on the MDE inspection report, on May 22, 2013, an EPA inspector visited the office of RFN and reviewed RFN’s file for the Target Facility.
5. I have reviewed the investigative case file, including the MDE inspection report and the EPA inspection report, and I am personally familiar with the facts set forth therein.
6. As part of my responsibilities, I have calculated the proposed penalty for each of the violations alleged in the Complaint by utilizing EPA’s *Interim Final Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (“ERPP”) as revised in April 2013.
7. TSCA requires EPA, in determining the amount of any civil penalty for violations of TSCA’s requirements for reducing exposure to lead to ‘...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.’ Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B). According to the *ERPP*, on September 10, 1980, EPA published the “*Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substances Control Act; PCB Penalty Policy*” (“*Guidelines*”) (45 Fed. Reg. 59770 (Sept. 10, 1980)) which describes in greater detail

the “civil penalty system” under TSCA. The purpose of this system is to ensure that civil penalties are assessed in a fair, uniform and consistent manner; that the penalties are appropriate for the violation committed; that economic incentives for violating TSCA are eliminated and the penalty is a sufficient deterrent to future violations. *ERPP* 8. The *ERPP* is part of the TSCA Civil Penalty System. *ERPP* 8.

8. Pursuant to the *ERPP*, I determined a gravity-based penalty for each alleged violation by analyzing the following factors: 1) the *nature* of each alleged violation; 2) the *circumstances* of each alleged violation according to Appendix A of the *ERPP*; and 3) the *extent* of harm to human health and the environment posed by each alleged violation consistent with the *ERPP*.
9. I next ascertained the gravity-based penalty utilizing the appropriate cells on the “Gravity-Based Penalty Matrix for PRE, RRP & LBP Activities Rules” (“GBP Matrix”) for violations that occurred after January 12, 2009, which is in Appendix B of the *ERPP* at B-2.
10. Finally, I considered whether to adjust the gravity-based penalty upward or downward by considering the violator-specific statutory factors and what, if any, economic benefit accrued to Respondent.
11. According to the *ERPP*, TSCA defines the “nature” or the violation as “the essential character of the violation, and incorporates the concept of whether the violation is of a ‘chemical control,’ ‘control-associated data gathering,’ or ‘hazard assessment’ nature.” *ERPP* 14. The *ERPP* states that the “‘nature’ of the violation will have a direct effect on the measure used to determine the appropriate ‘circumstance’ and ‘extent’ categories [that] are selected on the GBP Matrix in Appendix B.” *ERPP* 14-15.

12. The *ERPP* characterizes the requirements of the RRP Rule as “chemical control” in nature because they are “aimed at limiting exposure and risk presented by lead-based paint by controlling how lead-based paint is handled by renovators. . .” *ERPP* 14.
13. The *Guidelines* characterize recordkeeping and/or reporting requirements associated with chemical control regulations as “control-associated data gathering” because they enable the Agency to evaluate the effectiveness of the regulation and to monitor compliance. *Guidelines* 59771.
14. The *ERPP* characterizes the requirements of the PRE Rule as “hazard assessment” in nature because they are “designed to provide owners and occupants of target housing . . . with information that will allow them to weigh and assess the risks presented by renovations and to take proper precautions to avoid the hazards.” *ERPP* 14.
15. The “circumstance” of the violation assesses the likelihood or probability of harm resulting from a particular type of violation, whether *High, Medium* or *Low*. For a violation of the PRE Rule, “the primary circumstance to be considered is the occupant’s ability to assess and weigh . . . the factors associated with the risk to their [sic] health from the planned renovation, so they can take proper precautions to avoid any lead hazards.” *ERPP* 15. For a violation of the workplace standards of the RRP Rule, “the primary circumstance to be considered is whether the specific violation has a high, medium, or low probability of impacting human health.” *ERPP* 15.
16. The “extent” of the violation represents the degree, range, or scope of a violation’s potential for harm, which may be characterized as *Major, Significant, or Minor*. *ERPP* 16. “In the context of the PRE, RRP and LBP Activities Rules, the measure of the ‘extent’ of harm focuses on the overall intent of the rules and the amount of harm the

rules are designed to prevent (*e.g.*, serious health effects from childhood lead poisoning).” *ERPP* 16.

17. I determined the penalty proposed for Respondent’s alleged violations as follows prior to the March 10, 2017 filing of the Complaint on the basis of facts and information then available to me.
18. I have attached as Attachment A to this Declaration, a penalty calculation worksheet that summarizes the penalty determinations which I describe in the following paragraphs of this Declaration.

PENALTY CALCULATION
COUNT I

19. Count I of the Complaint alleges that Respondent failed to obtain its initial firm certification from EPA under 40 C.F.R. § 745.89 prior to performing renovations on or about April 1, 2013 (“Renovation”), at the Target Facility as required by 40 C.F.R. § 745.81(a)(2)(ii).
20. Because this violation (chemical control in nature) posed a medium probability of impacting human health and the environment, Appendix A of the *ERPP* assigns it a circumstance level of 3a. *ERPP* Appendix A, A-3 (Section VII-1).
21. Because EPA had information indicating that no individuals younger than eighteen resided in the Target Facility at the time of the violation or Renovation, consistent with the *ERPP*, I used a minor Extent factor for this violation. *ERPP* 17.
22. Consistent with the GBP Matrix applicable to violations that occurred after January 12, 2009, I determined that the gravity-based penalty for this circumstance level 3a violation with a minor extent is \$4,500. *ERPP* B-2.

COUNT II

23. Count II alleged that Respondent failed to retain all records necessary to demonstrate compliance with Subpart E of 40 C.F.R. Part 745 for a period of three years following completion of the Renovation as required by 40 C.F.R. § 745.86(a).
24. Because this violation (control-associated data gathering in nature) posed a low probability of impacting human health and environment, Appendix A of the *ERPP* assigns it a circumstance level of 6a. *ERPP* Appendix A, A-3 (Section VI-1).
25. For the reasons set forth in ¶ 21, I characterized this violation as a minor Extent factor.
26. Consistent with the applicable GBP Matrix of the *ERPP*, I determined that an appropriate penalty for this circumstance level 6a violation with a minor extent is \$600. *ERPP* B-2.

COUNT III

27. Count III alleged that Respondent failed to post signs clearly defining the work area and warning persons not involved in the renovation activities to remain outside the work area as required by 40 C.F.R. § 745.85(a)(1).
28. Because this violation (chemical control in nature) posed a high probability of impacting human health and environment, Appendix A of the *ERPP* assigns it a circumstance level of 1b. *ERPP* Appendix A, A-1 (Section I-8).
29. For the reasons set forth in ¶ 21, I characterized this violation as a minor Extent factor.
30. Consistent with the applicable GBP Matrix of the *ERPP*, I determined that an appropriate penalty for this circumstance level 1b violation with a minor extent is \$2,840. *ERPP* Appendix B, B-2.

COUNT IV

31. Count IV alleged that Respondent failed to remove all objects from the work area or cover them with plastic sheeting or other impermeable material as required by 40 C.F.R.

§ 745.85(a)(2)(i)(A).

32. Because this violation (chemical control in nature) posed a high probability of impacting human health and environment, Appendix A of the *ERPP* assigns it a circumstance level of 2a. *ERPP* Appendix A, A-5 (Section IX-1).
33. For the reasons set forth in ¶ 21, I characterized this violation as a minor Extent factor.
34. Consistent with the applicable GBP Matrix of the *ERPP*, I determined that an appropriate penalty for this circumstance level 2a violation with a minor extent is \$6,000. *ERPP* Appendix B, B-2.

COUNT V

35. Count V alleged that Respondent failed to cover all ducts with taped-down plastic sheeting or other impermeable materials as required by 40 C.F.R. § 745.85(a)(2)(i)(B).
36. Because this violation (chemical control in nature) posed a high probability of impacting human health and environment, Appendix A of the *ERPP* assigns it a circumstance level of 2a. *ERPP* Appendix A, A-5 (Section IX-2).
37. For the reasons set forth in ¶ 21, I characterized this violation as a minor Extent factor.
38. Consistent with the applicable GBP Matrix of the *ERPP*, I determined that an appropriate penalty for this circumstance level 2a violation with a minor extent is \$6,000. *ERPP* Appendix B, B-2

COUNT VI

39. Count VI alleged that Respondent failed to close windows and doors in the work area and cover them with plastic sheeting or other impermeable material as required by 40 C.F.R. § 745.85(a)(2)(i)(C).

40. Because this violation (chemical control in nature) posed a high probability of impacting human health and environment, Appendix A of the *ERPP* assigns it a circumstance level of 2a. *ERPP* Appendix A, A-5 (Section IX-3).
41. For the reasons set forth in ¶ 21, I characterized this violation as a minor Extent factor.
42. Consistent with the applicable GBP Matrix of the *ERPP*, I determined that an appropriate penalty for this circumstance level 2a violation with a minor extent is \$6,000. *ERPP* Appendix B, B-2.

COUNT VII

43. Count VII alleged that Respondent failed to cover the floor surface with taped-down plastic sheeting or other impermeable material within the work area as required by 40 C.F.R. § 745.85(a)(2)(i)(D).
44. Because this violation (chemical control in nature) posed a high probability of impacting human health and environment, Appendix A of the *ERPP* assigns it a circumstance level of 2a. *ERPP* Appendix A, A-5 (Section IX-4).
45. For the reasons set forth in ¶ 21, I characterized this violation as a minor Extent factor.
46. Consistent with the applicable GBP Matrix of the *ERPP*, I determined that an appropriate penalty for this circumstance level 2a violation with a minor extent is \$6,000. *ERPP* Appendix B, B-2.

COUNT VIII

47. Count VIII alleged that Respondent failed to contain waste from renovation activities in order to prevent the release of dust and debris before the Respondent removed the waste from the work area at the Target Facility for storage or disposal as required by 40 C.F.R. § 745.85(a)(4)(i).

48. Because this violation (chemical control in nature) posed a high probability of impacting human health and environment, Appendix A of the *ERPP* assigns it a circumstance level of 2a. *ERPP* Appendix A, A-5 (Section IX- [13]).
49. For the reasons set forth in ¶ 21, I characterized this violation as a minor Extent factor.
50. Consistent with the applicable GBP Matrix of the *ERPP*, I determined that an appropriate penalty for this circumstance level 2a violation with a minor extent is \$6,000. *ERPP* Appendix B, B-2.

COUNT IX

51. Count IX of the Complaint alleges that Respondent failed to obtain a written acknowledgement of provision of EPA's Lead Hazard Information Pamphlet or written certification of mailing the Pamphlet to the owner of the Target Facility prior to the renovation of such target housing pursuant to 40 C.F.R. § 745.84(a)(1).
52. Because this violation (hazard assessment in nature) posed a medium probability of impacting human health and environment, Appendix A of the *ERPP* assigns it a circumstance level of 4b. *ERPP* Appendix A, A-2 (Section V-1).
53. For the reasons set forth in ¶ 21, I characterized this violation as a minor Extent factor.
54. Consistent with the applicable GBP Matrix of the *ERPP*, I determined that an appropriate penalty for this circumstance level 4b violation with a minor extent is \$580. *ERPP* Appendix B, B-2.
55. I have not received any financial information from the Respondent in response to the email messages sent to it on April 16, 2017, and May 4, 2017.

TOTAL PROPOSED PENALTY

56. Consistent with the *ERPP* and TSCA, I then considered whether any upward or downward adjustments to the total gravity-based penalty were appropriate. I determined that

no upward adjustment to the penalty was appropriate because Respondent had no history of prior violations or an enhanced degree of culpability. I had inadequate information to determine whether the penalty warranted a downward adjustment to reflect Respondent's ability to pay or continue in business. I did determine that Respondent did not incur any significant economic benefit from its non-compliance. I am not aware of any other matters such that justice would require an adjustment to the penalty. I determined, consistent with the *ERPP* and TSCA, that an appropriate penalty for the violations alleged in the Complainant was \$38,520 which is the sum of individual penalties I calculated for each of the counts set out in the Complaint. The Appendix to this Declaration gives the individual penalties for each of the counts.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date: August 1, 2017



Craig E. Yussen

EXHIBIT F

APPENDIX

<u>COUNT</u>	<u>CIRCUMSTANCE LEVEL</u>	<u>PENALTY</u>
Count I – Failure to obtain an initial firm certification from EPA	Medium (3a, <i>ERPP</i> , Appendix A, page A-3)	\$4,500
<u>Count II</u> – Failure to retain all records necessary to demonstrate compliance	Low (6a, <i>ERPP</i> , Appendix A, page A-3)	\$600
Count III – Failure to post signs clearly defining the work area and warning persons not involved in the renovation activities to remain outside the work area	High (1b, <i>ERPP</i> , Appendix A, page A-1)	\$2,840
Count IV – Failure to remove all objects from the work area or cover them with other impermeable material	High (2a, <i>ERPP</i> , Appendix A, page A-5)	\$6,000
Count V – Failure to cover all ducts with taped-down impermeable materials	High (2a, <i>ERPP</i> , Appendix A, page A-5)	\$6,000
Count VI – Failure to close windows and doors in the work area and cover them with impermeable material	High (2a, <i>ERPP</i> , Appendix A, page A-5)	\$6,000
Count VII Failure to cover the floor surface with taped-down impermeable material	High (2a, <i>ERPP</i> , Appendix A, page A-5)	\$6,000
Count VIII – Failure to contain waste from renovation activities	High (2a, <i>ERPP</i> , Appendix A, page A-5)	\$6,000
Count IX – Failure to obtain a Written Acknowledgement of Provision of EPA’s Lead Hazard Information Pamphlet or Written Certification of Mailing the Pamphlet to the owner of target housing prior to the renovation of such target housing.	Medium (4b, <i>ERPP</i> , Appendix A, page A-2)	\$580
		Total \$38,520

The extent level for each count is minor.

EXHIBIT G

Yeany, Philip

From: Yeany, Philip
Sent: Thursday, April 06, 2017 10:26 AM
To: [REDACTED]
Cc: Craig Yussen
Subject: RFN
Attachments: Reformatted Corporate Financial Statement.docx

Dear Mr. and Mrs. Nataren:

I have attached a questionnaire that EPA uses when a company that EPA has charged with violations asserts that it cannot pay the penalty that EPA is seeking. Please fill out the form and send the completed questionnaire back to me. If you and Mr. Nataren or the company have filed bankruptcy papers or other papers showing that the company is no longer in operation, please include that with the completed questionnaire. Also, please include copies of your and Mr. Nataren's joint tax returns for the past three years. If you and Mr. Nataren file individual returns, please include the returns for both of you for the past three years. Please provide your response by April 24. To the address below. Please call me or send me an email message if you have any questions.

Philip Yeany
3RC50
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Desk: 215-814-2495
Fax: 215-814-2602
Email: yeany.philip@epa.gov

Yeany, Philip

From: Yeany, Philip
Sent: Thursday, May 04, 2017 11:48 AM
To: [REDACTED]
Cc: Craig Yussen
Subject: RFN
Attachments: Reformatted Corporate Financial Statement.docx

Dear Mr. and Mrs. Nataren:

I have not received the financial questionnaire that I sent you on April 6. For your convenience I have attached the questionnaire to this message. Please complete the questionnaire and return it to me at the address set out below. Please include copies of your and Mr. Nataren's joint tax returns for the past three years. If you and Mr. Nataren file individual returns, please include the returns for both of you for the past three years. Please provide your response by May 11. to the address below. Please call me or send me an email message if you have any questions.

Philip Yeany
3RC50
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Desk: 215-814-2495
Fax: 215-814-2602
Email: yeany.philip@epa.gov

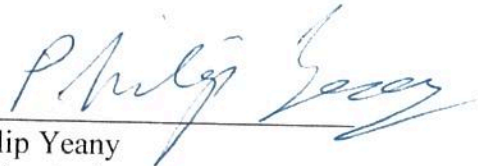
CERTIFICATE OF SERVICE

I hereby certify that on the date noted below, I had delivered to the Regional Hearing Clerk, EPA Region III, the original Motion for a Default Order and Declaration of Craig Yussen as well a copy of each. In addition, I caused a true and correct copy of the documents to be served as follows:

Certified Mail,
Return Receipt
Requested:

Jose and Frances Nataren
428 Foxridge Drive
Leesburg, VA 20175

8/4/17
Date


Philip Yeany
Senior Assistant
Regional Counsel

RECEIVED
2017 AUG -4 AM 11:37
REGIONAL HEARING CLERK
EPA REGION III
PHILIP YEANY