



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

September 30, 2019

BY HAND

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (ORC 04-6)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

RECEIVED

SEP 30 2019

EPA ORC
Office of Regional Hearing Clerk

Re: *In the matter of Excel Pro Painters, Inc., Docket No. TSCA-01-2019-0057*

Dear Ms. Santiago:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Administrative Complaint and Notice of Opportunity for Hearing; and
2. Certificate of Service.

Kindly file the documents in the usual manner. Thanks very much for your help.

Very truly yours,

A handwritten signature in blue ink that reads "Laura J. Berry".

Laura J. Berry
Enforcement Counsel

Enclosures

cc: Peter Wildes, Excel Pro Painters, Inc.
Jeffrey P. White, Esq.
Molly Magoon, EPA Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND**

In the Matter of:)	
)	
Excel Pro Painters, Inc.)	Docket No. TSCA-01-2019-0057
)	
Respondent.)	COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING
)	
Proceeding under Section 16(a) of the Toxic Substances Control Act, 42 U.S.C. § 2615(a))	RECEIVED SEP 20 2019 EPA ORC Office of Regional Hearing Clerk
)	

1. This Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued by Complainant, the U. S. Environmental Protection Agency (“EPA”), pursuant to Section 16(a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), regulations implementing TSCA at 40 C.F.R. § 745.87, 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. The Complainant is the Director of the Enforcement and Compliance Assurance Division, EPA Region 1 – New England.

2. The Respondent in this action, Excel Pro Painters, Inc. (“Respondent”), of South Portland, Maine, is hereby notified of Complainant’s determination that it has violated Sections 15 and 409 of TSCA, 15 U.S.C. §§ 2614 and 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“the Act”), 42 U.S.C. § 4851 *et seq.*, and federal regulations promulgated thereunder, including 40 C.F.R. Part 745, Subpart E, and 40 C.F.R. Part 745, Subpart L, as amended (collectively referred to herein as the “Renovation, Repair and Painting Rule” or “RRP Rule”). Respondent is also hereby notified that Complainant seeks civil penalties

pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, which provides that violations of TSCA Sections 15 or 409 are subject to the assessment by Complainant of civil and/or criminal penalties.

I. STATUTORY AND REGULATORY AUTHORITY

3. In 1992, Congress passed the Act in response to findings that low-level lead poisoning is widespread among American children, that pre-1980 American housing stock contains more than three million tons of lead in the form of lead-based paint, and that the ingestion of lead from deteriorated or abraded lead-based paint is the most common cause of lead poisoning in children. Among the stated purposes of the Act is ensuring that the existence of lead-based paint hazards be taken into account in the rental and renovation of homes and apartments. To carry out these purposes, the Act added a new section to TSCA, entitled *Subchapter IV – Lead Exposure Reduction*, which includes TSCA Sections 401-412, 15 U.S.C. §§ 2681-2692.

4. In 1996, EPA promulgated regulations to implement Section 402(a) of TSCA [*Lead-Based Paint Activities Training and Certification – Regulations*], 15 U.S.C. § 2682(a). The regulations under TSCA Section 402(a) are set forth at 40 C.F.R. Part 745, Subpart L [*Lead-Based Paint Activities*, 40 C.F.R. §§ 745.220-745.239], commonly referred to as the “Lead-Based Paint Activities, Certification, and Training Rule” or the “LBP Activities Rule.” In 1998, EPA promulgated regulations to implement Section 406(b) of TSCA [*Lead Hazard Information Pamphlet – Renovation of Target Housing*], 15 U.S.C. § 2686(b), and those regulations are set forth at 40 C.F.R. Part 745, Subpart E [*Residential Property Renovation*, 40 C.F.R. §§ 745.80-745.92], commonly referred to as the “Pre-Renovation Education Rule” or “PRE Rule.”

5. In 2008, EPA promulgated regulations to implement Section 402(c)(3) of TSCA [*Lead-Based Paint Activities Training and Certification – Renovation and Remodeling – Certification Determination*], 15 U.S.C. § 2682(c)(3), by amending both the PRE Rule at 40 C.F.R. Part 745, Subpart E, as well as the LBP Activities Rule at 40 C.F.R. Part 745, Subpart L, now commonly referred to as the “RRP Rule.”

6. The RRP Rule sets forth procedures and requirements for, among other things, the accreditation of training programs, certification of renovation firms and individual renovators, disclosure and work practice standards for renovation, repair, and painting activities in target housing and child-occupied facilities, and the establishment and retention of records to document compliance.

7. Pursuant to Section 401(17) of TSCA, as amended, 15 U.S.C. § 2681(17), the housing stock addressed by the Act and the RRP Rule is “target housing,” defined as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing). *See* 40 C.F.R. § 745.103.

8. Pursuant to 40 C.F.R. § 745.82, the requirements of the RRP Rule apply to all renovations performed for compensation in target housing, as defined in TSCA Section 401(17) and 40 C.F.R. §§ 745.83 and 745.103, and in “child-occupied facilities,” as defined in 40 C.F.R. § 745.83.

9. Pursuant to Section 401(14) of TSCA, 15 U.S.C. § 2681(14), and 40 C.F.R. § 745.103, the term “residential dwelling” means either a single-family dwelling, including attached structures such as porches and stoops, or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or

occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

10. For purposes of complying with Section 406(b) of TSCA and the RRP Rule, pursuant to 40 C.F.R. § 745.83, the term “pamphlet” as used herein means the EPA-approved pamphlet developed under TSCA Section 406(a), entitled “*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*” (EPA # 740-K-10-001), or any State or Tribal pamphlet developed for the same purpose and approved by EPA under 40 C.F.R. § 745.326.

11. 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.

12. 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 or modification 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, ceiling, plumbing, windows); weatherization projects (*e.g.*, cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. The term renovation does not include minor repair and maintenance activities.

13. Pursuant to 40 C.F.R. § 745.83, the term “minor repair and maintenance activities” means activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 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 surface areas.

14. 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 by an EPA-authorized State or Tribal program.

15. Under the RRP Rule, except in circumstances specified by the regulations that are not relevant to Respondent or the violations alleged in this Complaint, firms performing renovations in target housing and child-occupied facilities are, among other things, required to:

- a. Obtain an EPA certification for the firm prior to performing renovations;
- b. Provide the EPA-approved pamphlet to a lessee or adult occupant before renovation activities begin and obtain written verification that the pamphlet was provided;
- c. Ensure that a certified renovator either performs the renovation or directs a properly trained worker to perform the renovation;
- d. For exterior renovations, sufficiently cover the ground with plastic or other disposable impermeable material to collect falling paint debris; and
- e. Retain all records necessary to demonstrate compliance with the same.

See 40 C.F.R. §§ 745.81(a)(2), 745.84(a)(2), 745.89(d)(1)-(5), 745.85(a)(2)(ii)(C), and 745.86(a) and (b).

16. Pursuant to Section 409 of TSCA, it is unlawful for any person to fail to comply with any rule issued under Subchapter IV of TSCA (such as the RRP Rule). Pursuant to 40 C.F.R. § 745.87(a), the failure to comply with a requirement of the RRP Rule is a violation of Section 409 of TSCA. Pursuant to 40 C.F.R. § 745.87(b), the failure to establish and maintain records required by the RRP Rule, or to make them available, is a violation of Sections 15 and 409 of TSCA.

17. Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), provides that any person who violates a provision of Section 15 or 409 of TSCA shall be liable to the United States for a civil penalty.

18. Section 16(a) of TSCA and 40 C.F.R. § 745.87(d) authorize the assessment of a civil penalty of up to \$25,000 per violation per day of the RRP Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (“Debt Collection Improvement Act”), and EPA’s Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19 (“Penalty Inflation Rule”), each such TSCA violation that occurs after December 6, 2013 is subject to penalties of up to \$37,500 per day per violation. See 78 Fed. Reg. 66643 (November 6, 2013). Under the 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (“2015 Inflation Adjustment Act”), and the 2019 Penalty Inflation Rule, the \$37,500 maximum penalty was raised to \$39,873 for each such violation that occurs after November 2, 2015, and for which penalties are assessed on or after February 6, 2019. See Pub. L. 114-74, Section 701 (Nov. 2, 2015); 84 Fed. Reg. 2056 (Feb. 6, 2019) and 84 Fed. Reg. 5955 (Feb. 25, 2019).

II. GENERAL ALLEGATIONS

19. Respondent, Excel Pro Painters, Inc., is a Maine corporation, organized in or around 2015, with a mailing address of P.O. Box 2231, South Portland, Maine 04116.

20. Respondent provides painting and restoration services in and around the South Portland, Maine area. Respondent specializes in residential and commercial painting and restoration services, including carpentry to repair or replace rotted wood associated with interior or exterior painting projects, and operates under the direction of Peter Wildes.

21. Beginning in August 2018 and continuing into at least September 2018, Respondent performed renovation activities which constituted a “renovation” within the meaning of 40 C.F.R. § 745.83 at a single-family home located at 104 Clifford Street in South Portland, Maine (hereinafter, the “Clifford St. Renovation”).

22. The Clifford St. Renovation involved the removal or modification of painted surfaces or painted components, including hard scraping and power washing to prepare exterior surfaces for painting.

23. The single-family home located at 104 Clifford Street in South Portland, Maine (the “Property”) is privately owned and was built in or around the 1920s.

24. On or about September 4, 2018, a duly-authorized EPA inspector conducted a site visit at the Clifford St. Renovation and observed the exterior conditions at the Property (the “September 4th Site Visit”).

25. On or about September 13, 2018, the EPA inspector carried out a records inspection at the offices of the Maine Department of Environmental Protection (“Maine DEP”) at 312 Canco Road in Portland, Maine (the “September 13th Inspection”).

26. During the September 4th Site Visit and the September 13th Inspection, EPA sought records and other information relating to Respondent's compliance with RRP Rule requirements.

27. The Clifford St. Renovation performed by Respondent, as described in Paragraphs 21 and 22 above, constituted a renovation for compensation within the meaning of TSCA Section 406(b) and the RRP Rule. The Clifford St. Renovation does not fall within any exemption set forth in 40 C.F.R. § 745.82.

28. The Property described in Paragraph 23 above that is associated with the violations alleged in this Complaint is "target housing" as defined in Section 401(17) of TSCA and 40 C.F.R. § 745.103. The Property does not satisfy the requirements for an exemption under the provisions of TSCA (including 15 U.S.C. § 2681(17)) or the RRP Rule (including 40 C.F.R. § 745.82).

29. At all times relevant to the violations alleged in this Complaint, Respondent was a "firm," as defined in 40 C.F.R. § 745.83.

III. VIOLATIONS

30. EPA has identified the following violations of TSCA and the RRP Rule based on documents and other information obtained from Respondent during, or as a result of, the September 13th Inspection, the September 4th Site Visit and EPA's investigation of the facts and circumstances underlying the violations.

Count 1: Failure to Obtain Firm Certification

31. Paragraphs 1 through 30 are incorporated by reference as if fully set forth herein.

32. Pursuant to 40 C.F.R. § 745.89(a), firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.

Pursuant to 40 C.F.R. § 745.81(a)(2), on and after April 22, 2010, no firm may perform, offer, or claim to perform renovations in target housing or child-occupied facilities without certification from EPA under 40 C.F.R. § 745.89, unless the renovation is exempt under 40 C.F.R. § 745.82.

33. The Clifford St. Renovation involved the disturbance of over twenty (20) square feet of exterior painted surface and, in particular, the disturbance of painted surface areas through scraping and power washing, which can generate paint chips, debris, and dust.

34. The Clifford St. Renovation did not qualify as minor repair and maintenance activities under 40 C.F.R. § 745.83, nor was it exempt under 40 C.F.R. § 745.82.

35. At no time before or during the Clifford St. Renovation had Respondent obtained initial EPA-certification as a firm under 40 C.F.R. § 745.89(a).

36. Respondent's performance of the Clifford St. Renovation without being certified as a firm under 40 C.F.R. § 745.89 constitutes a violation of 40 C.F.R. §§ 745.81(a)(2) and 745.89(a) and TSCA Section 409.

37. The above-referenced violation alleged in this Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87, and a violation for which penalties may be assessed pursuant to Section 16 of TSCA, 15 U.S.C. § 2615.

Count 2: Failure to Provide Pre-Renovation Education Information

38. Paragraphs 1 through 37 are incorporated by reference as if fully set forth herein.

39. Pursuant to 40 C.F.R. § 745.84(a)(2), with respect to a rented residential dwelling unit in target housing, a firm must provide lead hazard information in the form of an EPA pamphlet to a tenant or adult occupant no more than 60 days prior to performing renovation activities therein and, also, obtain a written acknowledgement of receipt or certificate of mailing such pamphlet, in the manner specified at 40 C.F.R. § 745.84(a)(2)(i) or (a)(2)(ii).

40. Respondent failed to provide an EPA-approved pamphlet to the owner of the Property before commencing the Clifford St. Renovation.

41. Respondent's failure to distribute a lead hazard information pamphlet to the adult occupants of the Property constitutes a violation of 40 C.F.R. § 745.84(a)(2) and Section 409 of TSCA.

42. The above-listed violation alleged in this Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87, and a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

Count 3: Failure to Ensure Certified Renovator Performs or Directs Work

43. Paragraphs 1 through 42 are incorporated by reference as if fully set forth herein.

44. Pursuant to 40 C.F.R. § 745.89(d)(1), firms performing renovations in target housing must ensure that all individuals who perform renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. § 745.90. Pursuant to 40 C.F.R. § 745.89(d)(2), firms must ensure that a certified renovator is assigned to each renovation and discharges all the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

45. At no time before or during the Clifford St. Renovation was any person performing the renovation activities either a certified renovator or trained by a certified renovator, nor was a certified renovator assigned to the Clifford St. Renovation, as specified under 40 C.F.R. §§ 745.89(d)(1) and (d)(2).

46. Respondent's failure to ensure that an individual performing renovation activities at the Clifford St. Renovation was either a certified renovator or trained by a certified renovator and its failure to ensure that a certified renovator was assigned to the Clifford St. Renovation to

carry out all of the responsibilities in 40 C.F.R. § 745.90, constituted a violation of 40 C.F.R. §§ 745.89(d)(1) and (d)(2).

47. The above-listed violation alleged in this Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87, and a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

Count 4: Failure to Meet Work Practices Standards

48. Paragraphs 1 through 47 are incorporated by reference as if fully set forth herein.

49. Pursuant to 40 C.F.R. § 745.89(d)(3), firms performing renovations must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in 40 C.F.R. § 745.85. Pursuant to 40 C.F.R. § 745.85(a)(2)(ii)(C), in pertinent part, firms performing exterior renovations in target housing must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater.

50. With regard to the Clifford St. Renovation, Respondent failed to cover the ground with plastic sheeting or other disposable impermeable material in accordance with the RRP Rule, and such failure constituted a violation of 40 C.F.R. §§ 745.89(d)(3) and 745.85(a)(2)(ii)(C) and Section 409 of TSCA.

51. The above-listed violation alleged in this Count is a prohibited act under TSCA Section 409 and 40 C.F.R. § 745.87, and a violation for which penalties may be assessed pursuant to Section 16 of TSCA.

IV. PROPOSED PENALTY

52. Section 409 of TSCA and 40 C.F.R. § 745.87 provide that, for purposes of enforcing the RRP Rule under TSCA, the penalty for each violation under TSCA Section 16 shall be no more than \$25,000. Pursuant to the Debt Collection Improvement Act, the 2015 Inflation Adjustment Act, and EPA's Penalty Inflation Rule (40 C.F.R. Part 19), the maximum penalty for each such TSCA violation was increased to \$39,873 for violations occurring after November 2, 2015 for which penalty assessment is on or after February 6, 2019.

53. In determining the amount of any penalty to be assessed, Section 16(a) of TSCA requires EPA to consider the nature, circumstances, extent, and gravity of the violations and, with respect to the violator, ability to pay, the effect of the proposed penalty on the ability of the violator to continue to do business, any history of prior such violations, the degree of culpability of the violator, and such other matters as justice may require. *See* 15 U.S.C. § 2615(a)(2)(B).

54. To assess a penalty for the violations alleged herein, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* ("RRP Penalty Policy") (revised April 2013). Complainant has also taken into account EPA's *Lead-Based Paint Graduated Penalty Approach Policy for Small-Scale Businesses* ("GPA Policy") (September 20, 2019). The RRP Penalty Policy and GPA Policy provide a rational, consistent, and equitable calculation methodology for applying the above-listed statutory penalty factors to specific cases. Copies of the RRP Penalty Policy and the GPA Policy are enclosed with this Complaint. Complainant proposes that Respondent be assessed a civil penalty in the

amount of **six thousand one hundred fifty-five dollars (\$6,155)** for the following TSCA violations alleged in this Complaint:

- a. Failure to Obtain Firm Certification (\$1,500);
- b. Failure to Provide Pre-Renovation Education Information (\$1,156)
- c. Failure to Ensure Certified Renovator Performs or Directs Work (\$1,500); and
- d. Failure to Meet Work Practices Standards (\$1,999).

(See Attachment A to this Complaint explaining the reasoning for this penalty.)

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

55. Pursuant to Section 16(a)(2)(A) of TSCA, 15 U.S.C. § 2615(a)(2)(A), and 40 C.F.R. § 22.14, notice is hereby given that Respondent has the right to request a hearing on any material fact alleged in this Complaint or on the appropriateness of any proposed penalty. Any such hearing would be conducted in accordance with EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. Any request for a hearing must be included in Respondent's written Answer to this Complaint ("Answer") and filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.

56. In its Answer, a Respondent may also: (1) dispute any material fact in the Complaint; (2) contend that the proposed penalty is inappropriate; or (3) contend that it is entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which the Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation and so states, the allegation is considered denied. The failure to deny an allegation constitutes an admission of that allegation. The Answer must also state the circumstances or arguments which are alleged to

constitute the grounds of any defense, the facts which Respondent disputes, the basis for opposing any proposed relief, and whether a hearing is requested. *See* 40 C.F.R. § 22.15 of the Consolidated Rules of Practice for the required contents of an Answer.

57. Respondent shall send the original and one copy of the Answer, as well as a copy of all other documents that Respondent files in this action, to the Regional Hearing Clerk at the following address:

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code ORC 04-6)
Boston, MA 02109-3912

58. Respondent shall also serve a copy of the Answer, as well as a copy of all other documents that Respondent files in this action, to Laura J. Berry, the attorney assigned to represent Complainant in this matter, and the person who is designated to receive service in this matter under 40 C.F.R. § 22.5(c)(4), at the following address:

Laura J. Berry, Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code ORC 04-2)
Boston, MA 02109-3912
Tel: (617) 918-1148

59. If Respondent fails to file a timely Answer to the Complaint, Respondent may be found to be in default, pursuant to 40 C.F.R. § 22.17 of the Consolidated Rules of Practice. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations under Section 16(a)(2)(A) of TSCA. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in the default order shall become due and payable by Respondent, without further proceedings, thirty (30) days after the default order becomes final.

60. The filing and service of documents other than the Complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by email, consistent with the “Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer,” a copy of which has been provided with this Complaint.

VI. SETTLEMENT CONFERENCE

61. Whether or not a hearing is requested upon filing an Answer, Respondent may confer informally with the EPA concerning the alleged violations, the amount of any penalty, and/or the possibility of settlement. Such conference provides Respondent with an opportunity to respond informally to the allegations and provide any additional information that may be relevant to the disposition of this matter. Any settlement shall be made final by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA Region 1.

62. Please note that a request for an informal settlement conference does not extend the period within which a written Answer must be submitted to avoid default; the deadline by which Respondent must file an Answer is only extended on a motion granted by the Regional Judicial Officer in accordance with the Consolidated Rules of Practice. To explore the possibility of settlement in this matter, Respondent should contact Laura J. Berry, Enforcement Counsel, at the address provided above, or by calling her at (617) 918-1148.

Quick Resolution

VII. QUICK RESOLUTION

63. Under Section 22.18(a) of the Consolidated Rules of Practice, Respondent has the option of resolving this matter at any time by paying the penalty proposed in the Complaint in full.

64. Payment of the penalty must be made by submitting a company, bank, cashier's, or certified check payable to the "Treasurer, United States of America." The check should reference the name and docket number of this proceeding (*In re Excel Pro Painters, Inc.*, TSCA-01-2019-0057) and shall be sent as follows:

If remitted by regular U.S. mail:

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

If remitted by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

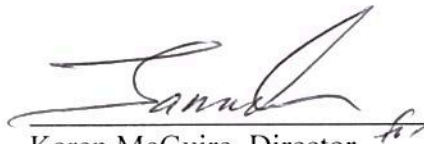
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency

65. Copies of the check must also be mailed to the Regional Hearing Clerk and Laura J. Berry at the addresses referenced in paragraphs 57 and 58 above. For notice of payment to Ms. Berry, in lieu of mailing, such notice may be given via e-mail to Berry.LauraJ@epa.gov.

66. If Respondent pays the proposed penalty in full within thirty (30) days after receiving this Complaint, then Respondent need not file an Answer to the Complaint. If Respondent wishes to resolve this matter without having to file an Answer but needs additional time in which to do so, Respondent may file a written statement with the Regional Hearing Clerk

at the address above within thirty (30) days of receiving the Complaint. The written statement must specify that Respondent agrees to pay the penalty within sixty (60) days of receipt of the Complaint. Failure to make such payment within sixty (60) days may subject Respondent to a default action.

67. Neither the assessment nor payment of an administrative penalty shall affect Respondent's continuing obligation to comply with all applicable requirements of federal law.



Karen McGuire, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 1

Date: 9/27/19

PROPOSED PENALTY SUMMARY

This Summary provides a justification for a proposed penalty calculation in the administrative penalty action against Excel Pro Painters, Inc., of South Portland, Maine (“Respondent”) which seeks to assess a civil penalty in the amount of **\$6,155** for alleged violations of the Renovation, Repair and Painting (“RRP”) Rule. The proposed penalty was calculated according to EPA’s August 2010 *Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule* (“RRP Penalty Policy”) (revised April 2013) and the September 2019 *Lead-Based Paint Graduated Penalty Approach for Small-Scale Businesses* (“GPA Policy”); the latter provides for reduced penalties for businesses with pre-tax gross annual income of \$2,000,000 or less, or a net worth of \$600,000 or less. A breakdown of the proposed penalty calculation is set forth below.

Count 1: Failure to Obtain Firm Certification

Provision Violated: 40 C.F.R. § 745.89(a) requires firms that perform, offer, or claim to perform renovations for compensation to obtain initial certification from EPA, pursuant to 40 C.F.R. § 745.81(a)(2)(ii).

Circumstance Level: The failure to obtain RRP firm certification results in a *medium probability* of impacting human health and the environment due to exposure to lead-based paint, lead dust, and debris. As a result, under Appendix A of the RRP Penalty Policy, violations of 40 C.F.R § 745.89(a) are assigned a *Circumstance Level 3a*.

Extent of Harm: The RRP Penalty Policy takes into consideration the risk factors for exposure to lead-based paint and lead-based paint hazards. The potential for harm is measured by the age of children living in the target housing and the presence of pregnant women living there. Children under the age of six are most likely to be adversely affected by the presence of lead-based paint and lead-based paint hazards, because of how they play and ingest materials from their environment, and because of their vulnerability due to their physical development. In this case, since there were two children between the ages of 6 and 17 known to be living in the affected property at the time of the violation, the violation warrants a *significant* extent factor under the RRP Penalty Policy.

Respondent failed to obtain an RRP firm certification before offering and performing renovations at 104 Clifford St. in South Portland, Maine.

One violation, adjusted for inflation¹

\$15,868

¹ Pursuant to applicable EPA inflationary guidance, available at <https://www.epa.gov/enforcement/enforcement-policy-guidance-publications#penalty>.

Count 2: Failure to Provide Pre-Renovation Education Information

Provision Violated: 40 C.F.R. § 745.84(a)(2) requires that RRP firms provide a “Renovate Right”² pamphlet to the owner and adult occupants of any residential dwelling unit of target housing before beginning renovations in the unit.

Circumstance Level: The failure to provide a pamphlet prior to all renovations results in a *high probability* of impacting human health and the environment due to exposure to lead-based paint, lead dust, and debris. As a result, under Appendix A of the RRP Penalty Policy, violations of 40 C.F.R. § 745.84(a)(2) are assigned a *Circumstance Level 1b*.

Extent of Harm: This violation warrants a *significant* extent factor under the RRP Penalty Policy. [See Extent of Harm description for Count 1.]

Respondent failed to provide the pamphlet to the owner and adult occupants before beginning renovations, in August 2018, at 104 Clifford St. in South Portland, ME.

One violation, adjusted for inflation³

\$12,240

Count 3: Failure to Ensure Certified Renovator Performs or Directs Work

Provision Violated: 40 C.F.R. § 745.89(d)(2) requires that firms assign a certified renovator to each renovation performed to discharge all of the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

Circumstance Level: The failure to assign a certified renovator to all renovations results in a *medium* probability of impacting human health and the environment due to exposure to lead-based paint, lead dust, and debris. As a result, under Appendix A of the RRP Penalty Policy, violations of 40 C.F.R. § 745.89(d)(2) are assigned a *Circumstance Level 3a*.

Extent of Harm: This violation warrants a *significant* extent factor under the RRP Penalty Policy. [See Extent of Harm description for Count 1.]

Respondent failed to assign an RRP-certified renovator to the renovations performed at 104 Clifford St. in South Portland, ME.

One violation, adjusted for inflation⁴

\$15,868

Count 4: Failure to Meet Work Practices Standards

Provision Violated: 40 C.F.R. §§ 745.85(a)(2)(ii)(C) and 745.89(d)(3) and requires that RRP firms ensure that the exterior work area is contained before beginning and during the renovation.

² Available at <https://www.epa.gov/lead/renovate-right-important-lead-hazard-information-families-child-care-providers-and-schools>.

³ See FN 1.

⁴ See FN 1.

Firms must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. For exterior renovations, firms must cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering. Ground containment measures may stop at the edge of the vertical barrier when using vertical containment system.

Circumstance Level: The failure to ensure that the work area is contained by covering the ground with plastic sheeting results in a *high* probability of impacting human health and the environment due to exposure to lead-based paint, lead dust, and debris. As a result, under Appendix A of the RRP Penalty Policy, violations of 40 C.F.R § 745.85(a)(2)(ii)(C) are assigned a *Circumstance Level 2a*.

Extent of Harm: This violation warrants a *significant* extent factor under the RRP Penalty Policy. [See Extent of Harm description for Count 1.]

Respondent failed to cover the ground with plastic prior to and during renovations performed at 104 Clifford St. in South Portland, Maine.

One violation, adjusted for inflation⁵

\$21,157

Total Penalty under RRP Penalty Policy (Counts 1-4)	\$65,133
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In light of the size of Respondent's business, EPA has also considered EPA's GPA Policy, which provides for reduced penalties for businesses with pre-tax gross annual income of \$2,000,000 or less, or a net worth of \$600,000 or less. Pursuant to the methods outlined in the GPA Policy, EPA has reduced the penalty calculated for the above violations pursuant to the RRP Penalty Policy using a multiplier of 0.0945, resulting in a final total penalty of \$6,155 for the violations alleged above. This reduction incorporates EPA's consideration of the size of Respondent's business and its ability to continue in business.

Total Proposed Penalty under RRP Penalty Policy with GPA adjustment	\$6,155
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⁵ See FN 1.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND**

)		
In the Matter of:)		
)	Docket No. TSCA-01-2019-0057	
Excel Pro Painters, Inc.)		
)		
Respondent.)	COMPLAINT AND NOTICE OF	
)	OPPORTUNITY FOR HEARING	
Proceeding under Section 16(a) of)		
the Toxic Substances Control Act,)		
42 U.S.C. § 2615(a))		
)		

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity to Request a Hearing has been sent to the following persons on the date noted below:

Original and one copy,
hand-delivered:

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1 (ORC 04-6)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Copy, by Certified Mail,
Return Receipt Requested,
and by email, with
copy of 40 C.F.R. Part 22:

Peter Wildes
Excel Pro Painting, Inc.
P.O. Box 2231
South Portland, ME 04116
excelpropainters@yahoo.com

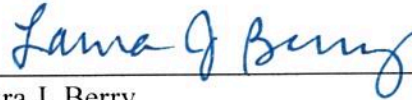
and

Peter Wildes
Excel Pro Painting, Inc.
18 Fernald Terrace
Portland, ME 04103

and

Jeffrey P. White, Esq.
Jeffrey P. White & Associates, P.C.
243 Mt. Auburn Ave., Suite B-1
Auburn, ME 04210
jwhite@whitelawoffices.com

Dated: 9/30/19



Laura J. Berry
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