

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN RE:

Gunton Corporation
26150 Richmond Road
Bedford Heights, OH 44146

Respondent,

1242 N. Mascher Street
Philadelphia, PA 19122

6767 Phillips Mill Road
Solebury, PA 18938

412 Fairview Road
Penn Valley, PA 19072

174 Homestead Road
Wayne, PA 19087

731 Mt. Moro Road
Villanova, PA 19085

515 N. Wynnewood Avenue
Wynnewood, PA 19072

103 Clwyd Road
Bala Cynwyd, PA 19004

42 Derwin Road
Bala Cynwyd, PA 19004

DOCKET NO. TSCA-03-2016-0057

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

Proceeding under Section 16(a) of
the Toxic Substances Control Act
15 U.S.C. § 2615(a)

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

2016 FEB 29 AM 11:44

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15 Auchy Road)
Erdenheim, PA 19038)
)
Target Housing.)

ADMINISTRATIVE COMPLAINT
AND NOTICE OF OPPORTUNITY FOR 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 U.S. Environmental Protection Agency (“EPA”) by Section 16(a) of the Toxic Substances Control Act, as amended by the Residential Lead-Based Paint Hazard Reduction Act of 1992 (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* (“*Consolidated Rules of Practice*”), 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. The Administrator’s authority was delegated to, among others, the Regional Administrator of EPA, Region III, who redelegated such authority to the Director of the Land and Chemicals Division (“Complainant”).
2. Complainant hereby notifies Gunton Corporation (“Respondent”), that EPA has reason to believe that Respondent has violated the federal regulations set forth at 40 C.F.R. Part 745, Subpart E, known as the Lead Renovation, Repair, and Painting Rule (“RRP Rule”).
3. 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 with any rule issued thereunder, including the RRP Rule. Pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), any person who violates a provision of Section 409 of TSCA, 15 U.S.C. § 2689, shall be liable for a civil penalty.

In support of this Complaint, Complainant makes the following allegations, findings of fact and conclusions of law:

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. EPA and EPA's Office of Administrative Law Judges have jurisdiction over this matter pursuant to Section 16 of TSCA, 15 U.S.C. § 2615, and 40 C.F.R. §§ 22.1(a)(5), 22.4 and 745.87.

5. Pursuant to 40 C.F.R. § 745.82(a), 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)(1)-(3) and (b).

6. 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.

7. 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.

8. 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.

9. 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 surfaces.

10. Pursuant to 40 C.F.R. § 745.83, the term “painted surface” means a component surface covered in whole or in part with paint or other surface coatings.

11. 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.

12. 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 housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

13. 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, *inter alia*, a single-family dwelling, including attached structures such as porches and stoops.

14. At all times relevant to the violations alleged herein, Respondent was a corporation incorporated in the State of Ohio with a principle place of business located at 26150 Richmond Road, Bedford Heights, Ohio 44146, and Respondent is registered as a foreign corporation in the Commonwealth of Pennsylvania with a principle place of business currently located at 108 Brooke Road, Pottstown, PA 19464.

15. At all times relevant to the violations alleged herein, Respondent was a “person” within the meaning of 40 C.F.R. § 745.83.

16. At all times relevant to the violations alleged herein, Respondent was a “firm” within the meaning of 40 C.F.R. § 745.83.

17. Respondent performed a renovation, including window replacement, for compensation at each of the following locations:

Location	Contract Date
1242 N. Mascher St. Philadelphia, PA 19122	July 14, 2011
6767 Phillips Mill Rd. Solebury, PA 18939	June 16, 2011
412 Fairview Rd. Penn Valley, PA 19072	May 23, 2011
174 Homestead Rd. Wayne, PA 19087	April 13, 2011
731 Mt. Moro Rd. Villanova, PA 19085	June 8, 2011
515 N. Wynnewood Ave. Wynnewood, PA 19072	June 6, 2011
103 Clwyd Rd. Bala Cynwyd, PA 19004	June 1, 2011
42 Derwin Rd. Bala Cynwyd, PA 19004	June 2, 2011
15 Auchy Rd. Erdenheim, PA 19038	March 2, 2011

18. At all times relevant to the violations alleged herein, the building locations described in Paragraph 17, above, were “target housing” within the meaning of Section 401(17) of TSCA, 15 U.S.C. § 2681(17).

19. At all times relevant to the violations alleged herein, the building locations described in Paragraph 17, above, were a detached single family dwelling unit and a “residential dwelling” within the meaning of Section 401(14) of TSCA, 15 U.S.C. § 2681(14).

20. The window replacement renovations performed by Respondent at the building locations described in Paragraph 17, above, were a “renovation” within the meaning of 40 C.F.R. § 745.83.

21. The renovations performed by Respondent at the building locations described in Paragraph 17, above, were a “renovation” at target housing set forth in 40 C.F.R. § 745.82.

22. None of the exceptions described in 40 C.F.R. § 745.82(a)(1)-(3) or (b) apply to the “renovations” renovations performed by Respondent at the building locations described in Paragraph 17, above.

23. On September 22, 2011, a duly authorized representative of EPA conducted an inspection to determine Respondent’s compliance with the RRP Rule in connection with the renovations performed by Respondent at the target housing locations described in Paragraph 17, above, by reviewing each renovation contract at the target housing described in Paragraph 17, above, to determine compliance with 40 C.F.R. Part 745, Subpart E.

**Count I-IX
(Failure to Retain Records)**

24. The allegations contained in the preceding paragraphs are incorporated by reference herein as though fully set forth at length.

25. Pursuant to 40 C.F.R. § 745.86(a), firms performing renovations must retain, and, if requested, make available to EPA all records necessary to demonstrate compliance with 40 C.F.R. Part 745, Subpart E, including, where applicable, records described in 40 C.F.R.

§ 745.86(b)(1)-(6), for a period of three years following completion of the renovation at each target housing.

26. Respondent failed to retain any documentation of compliance with the requirements of 40 C.F.R. § 745.85, as required by 40 C.F.R. § 745.86(b)(7), for each renovation performed by Respondent at the target housing described in Paragraph 17, above.

27. Respondent failed to retain all records necessary to demonstrate compliance with 40 C.F.R. § 745.86(b)(7), for a period of three years following completion of the renovations performed by Respondent at each target housing location described in Paragraph 17, above, as required by 40 C.F.R. § 745.86(a).

28. Respondent's acts or omissions described in paragraphs 25-27 above constitute nine (9) violations of 40 C.F.R. § 745.86(a) and Section 409 of TSCA, 15 U.S.C. § 2689.

III. PROPOSED CIVIL PENALTY

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, 15 U.S.C. § 2614 or 2689, shall be liable to the United States for a civil penalty. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), authorizes the assessment of a civil penalty of up to \$25,000 per day per violation of the RRP Rule. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations that occur on or after January 13, 2009, are subject to penalties up to \$37,500 per day per violation.

For purposes of determining the amount of any civil penalty to be assessed, Section 16 of TSCA, 15 U.S.C. § 2615, 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 the proposed penalty for the violations alleged herein, Complainant took into account the particular facts and circumstances of this case with specific reference to these “statutory factors” 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 provides a rational, consistent, and equitable calculation methodology for applying the “statutory factors” to particular cases.

Consistent with the above, EPA proposes to assess a civil penalty of \$5,400 against Respondent for the nine violations alleged herein as follows:

<u>Count I-VIII: Regulatory Requirement: 40 C.F.R. § 745.86(a)</u>		
<i>Circumstance Level: 6a</i>	(ERP, Appendix A, page A-3)	
<i>Extent Level: Minor</i>	(ERP, Appendix B, page B-2)	
<i>Proposed Penalty per violation</i>	(ERP, Appendix B, page B-2)	\$ 600
TOTAL PROPOSED PENALTY		\$5,400

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 to adjust the proposed civil penalty assessed in this Complaint. The proposed penalty reflects a presumption of Respondent’s ability to pay the penalty and to continue in business based on the size of business and the economic impact of the proposed penalty on the 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.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

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

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 Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement of whether a hearing is requested. All material facts not denied in the Answer will be considered admitted.

If Respondent fails to file a written Answer within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged against Respondent in this Complaint and a waiver of Respondent's right to a hearing on such factual allegations. Failure 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.

Any hearing requested by 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.

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to the following attorney representing Complainant in this case:

Louis F. Ramalho (3RC50)
Sr. Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

V. SETTLEMENT CONFERENCE

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, 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 RESPONDENT OF ITS RESPONSIBILITY TO FILE A TIMELY ANSWER TO THE COMPLAINT.**

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.

If Respondent wishes to arrange a settlement conference, Respondent or its legal counsel should contact Mr. Ramalho at (215) 814-2681 prior to the expiration of the thirty (30) day

period following the receipt of this Complaint. Once again, any request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.

VI. QUICK RESOLUTION

In accordance with 40 C.F.R. § 22.18(a) of the Consolidated Rules of Practice, Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint. If Respondent pays the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to Rule 22.18(a)(1), of the *Consolidated Rules of Practice*, 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer but needs additional time to pay the penalty, pursuant to Rule 22.18(a)(2) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint stating that Respondent agree 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 the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and a copy shall be provided to Louis F. Ramalho (3RC50), Senior Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. 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.

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.

Payment of the penalty shall be made sending a certified or cashier's check made payable to the "United States Treasury," as follows:

- a. by Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO, 63197-9000.
Contact: Craig Steffen 513-487-2091
Molly Williams 513-487-2076

- b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

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

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- d. By electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA 021030004
Account No. 68010727
SWIFT Address FRNYUS33

33 Liberty Street
NY, NY 10045

(Field tag 4200 of Fedwire message should read "D 68010727
Environmental Protection Agency")

- e. By automatic clearinghouse ("ACH") to the following account:

U.S. Treasury REX/Cashlink ACH Receiver
ABA 051036706
Account No. 310006
Environmental Protection Agency
CTX Format
Transaction Code 22 – checking

Contact: John Schmid
202-874-7026

- f. Online payments can be made at WWW.PAY.GOV by entering "sfo 1.1" in the search field, and opening the form and completing the required fields.

- g. Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>

Each payment shall also reference the above case caption and docket number (TSCA-03-2016-0057). At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to the following addressees:

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

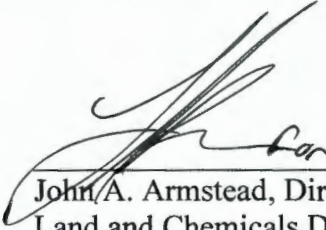
Louis F. Ramalho (3RC50)
Senior Asst. Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

VII. SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS

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.

2/24/16
Date



John A. Armstead, Director
Land and Chemicals Division