

hazards. One of the stated purposes of the Act is to implement a broad program to reduce lead-based paint hazards in the Nation's housing stock. The Act amended TSCA by adding *Title VI – Lead Exposure Reduction*, TSCA Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692.

5. Section 402 of TSCA, 15 U.S.C. §2682, requires that the Administrator of EPA promulgate regulations regarding the activities of individuals and contractors engaged in lead-based paint activities, including renovation of residence built prior to 1978, and regulations for the certification of such individuals and contractors.

6. Pursuant to Section 402(a) of TSCA, 15 U.S.C. § 2682(a), the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart L, *Lead-Based Paint Activities*. See *Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities*, 61 Fed. Reg. 45778, 45813 (Aug. 29, 1996). Pursuant to Section 406(b) and Section 407 of TSCA, 15 U.S.C. §§ 2686(b) and 2687, the EPA promulgated regulations at 40 C.F.R. Part 745, Subpart E, *Residential Property Renovation*. See *Lead; Requirements for Hazard Education Before Renovation of Target Housing*, 63 Fed. Reg. 29908, 29919 (June 1, 1998). Finally, pursuant to Section 402(c)(3) of TSCA, 15 U.S.C. § 2682(c)(3), the EPA amended and re-codified regulations at 40 C.F.R. Part 745, Subparts E and L, and added additional regulations at 40 C.F.R. Subpart L (the "Renovation, Repair and Painting Rule" or the "RRP Rule"). See *Lead; Renovation, Repair, and Painting Program*, 73 Fed. Reg. 21692, 21758 (issued Mar. 31, 2008 and codified at 40 C.F.R. Part 745, Subpart E).

7. The RRP Rule establishes work practice standards for renovations that disturb lead-based paint in target housing and child-occupied facilities and requires firms and individuals performing, offering, or claiming to perform such renovations to obtain EPA certification.

8. Section 401(17) of TSCA, 15 U.S.C. § 2681(17) defines *target housing* to mean 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 zero-bedroom dwelling.

9. 40 C.F.R. § 745.83 defines *renovation* to mean 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, planing thresholds to install weather stripping), and interim controls that disturb painted surfaces.

10. 40 C.F.R. § 745.83 defines *person* as any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

11. 40 C.F.R. § 745.83 defines *firm* as a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

12. 40 C.F.R. § 745.81(a)(2)(ii) states that on or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82.

13. 40 C.F.R. § 745.89(a)(1) provides that “firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.”

14. 40 C.F.R. § 745.89(d)(2) requires firms performing renovations to ensure a certified renovator is assigned to each renovation performed by the firm and that they discharge all the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

15. The RRP Rule sets forth the regulations for “Work Practice Standards” that must be followed by firms performing renovations on target housing. Pursuant to 40 C.F.R. § 745.81(a)(4)(ii), all renovations must be performed in accordance with the work practice standards in 40 C.F.R. § 745.85.

16. The regulation at 40 C.F.R. 745.87(a) provides that failure or refusal to comply with any provision of 40 C.F.R. Part 745, Subpart E, is a violation of Section 409 of TSCA, 15 U.S.C. 2689, provides that it shall be unlawful for any person to fail to comply with, inter alia, any provision of 40 C.F.R. Part 745, Subpart E.

17. Section 16(a) of TSCA, 42 U.S.C. § 2615(a), and 40 C.F.R. § 745.87(d), authorize the EPA Administrator to assess a civil penalty for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. Each day that such a violation continues constitutes a separate violation. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and most recently by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 per day for violations that occurred after January 12, 2009. Congress amended TSCA in June 2016, increasing the statutory maximum penalty to \$37,500. P.L. No: 114-182. The 2017 Civil Monetary Penalty Inflation Adjustment Rule, 82 Fed. Reg. 3633 (Jan. 12, 2017), promulgated pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, increased these statutory maximum penalties to \$38,114 per day for violations that occurred after November 2, 2015 and for which penalties were assessed on or after January 15, 2017. Most recently, the 2018 Civil Monetary Penalty Inflation Adjustment Rule, 83 Fed. Reg. 1190 (Jan. 10, 2018), promulgated pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, increased these statutory maximum penalties to \$38,892 per day for violations that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2018.

General Factual Allegations

18. Respondent, at all times referred to herein, is a “firm” and a “person” per 40 C.F.R. § 745.83.

19. Respondent, at all times referred to herein, is an “individual” within the meaning of TSCA and doing business in the state of Missouri.

20. Respondent was not a certified renovation firm and did not assign a certified renovator when performing renovations on a residential property located at 554 Harrison Street, Kansas City, Missouri (Property).

21. The Property was constructed in 1920 and is target housing as defined by 40 C.F.R. § 745.103.

22. At all times relevant to this Complaint, the renovation project at the Property was a “renovation for compensation” subject to the RRP Rule, per 40 C.F.R. § 745.82.

23. The EPA conducted a work site inspection at the renovation site on January 12, 2016. The EPA also conducted a follow up record keeping inspection of Respondent’s sub-contractor at the property on January 26, 2016. The EPA collected records and information from the Inspections as part of the evaluation of Respondent’s compliance.

24. As a result of the Inspection and additional information obtained by EPA, Complainant has identified the following violations of the RRP Rule and Section 409 of TSCA, 15 U.S.C § 2689.

Alleged Violations

25. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

Count 1

26. The facts stated in 18 through 24 are re-alleged and incorporated as if fully stated herein.

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

28. Pursuant to 40 C.F.R. § 745.89(a)(1), firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling.

29. At the time of the Inspection, it was discovered that Respondent failed to apply for and obtain EPA certification prior to commencing the renovation for compensation on the Property, which did not qualify for one of the exceptions identified in § 745.82.

30. Respondent's failure to apply for and obtain initial firm certification prior to performing the renovations at the Property constitutes a violation of 40 C.F.R. § 745.81 (a)(2)(ii) and 40 C.F.R. § 745.89(a)(1). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 2

31. The facts stated in 18 through 24 are re-alleged and incorporated as if fully stated herein.

32. Pursuant to 40 C.F.R. § 745.84(a)(1), a firm must provide the owner of the unit with the EPA Pamphlet no more than 60 days before beginning renovation activities.

33. At the time of the Inspection, it was discovered that Respondent failed to provide the owner of the unit with the EPA Pamphlet no more than 60 days before beginning renovation activities.

34. Respondent's failure to provide the owner of the unit with the EPA Pamphlet before beginning renovation activities constitutes a violation of 40 C.F.R. § 745.84(a)(1). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 3

35. The facts stated in 18 through 24 are re-alleged and incorporated as if fully stated herein.

36. Pursuant to 40 C.F.R. § 745.89(d)(2), firms must assign a certified renovator to each renovation performed by the firm and ensure the discharge of all the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

37. At the time of the Inspection, it was discovered that Respondent failed to assign a certified renovator to each renovation performed by the firm and failed to ensure the discharge of all the certified renovator responsibilities identified in 40 C.F.R. § 745.90.

38. Respondent's failure to assign a certified renovator to each renovation performed by the firm and ensure the discharge all the certified renovator responsibilities constitutes a violation of 40 C.F.R. § 745.89(d)(2). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Count 4

39. The facts stated in 18 through 24 are re-alleged and incorporated as if fully stated

herein.

40. Pursuant to 40 C.F.R. § 745.89(d)(3), firms must ensure that all renovations performed by the firm are performed in accordance with the work practice standards in § 745.85.

41. At the time of the Inspection, it was discovered that Respondent failed to ensure that all renovations performed by the firm were in accordance with the work practice standards in § 745.85. This included work practice standards, including but not limited to, posting signs that clearly defined the work area and warned occupants and other persons not involved in renovation activities to remain outside of the work area; ensuring all duct openings in the work area were closed and covered with taped-down plastic sheeting or other impermeable material; and ensuring the containment of waste from renovation activities to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal.

42. Respondent's failure to ensure all renovations were in accordance with the Work practice standards in § 745.85 constitutes a violation of 40 C.F.R. § 745.89(d)(3). Respondent, therefore, violated Section 409 of TSCA, 15 U.S.C. § 2689.

Relief Sought

43. Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615, for violations of Section 409 of TSCA, 15 U.S.C. § 2689. Pursuant to 15 U.S.C. § 2615, and based upon the facts set forth above, it is proposed that a civil penalty be assessed against Respondent.

44. The proposed penalty is based upon the facts alleged in this Complaint and upon the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), including the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent: a) a Respondent's ability to pay, b) the effect on a Respondent's ability to continue to do business, c) any history of prior violations, d) the degree of culpability, and e) such other matters as justice may require.

45. In order to assess a penalty for the violations alleged in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's August 2010 Interim Final Policy entitled "Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Activities Rule" (the "LBP Consolidated ERPP"), a copy of which is enclosed with this Complaint. The LBP Consolidated ERPP provides a rational, consistent, and equitable calculation methodology for applying to particular cases the statutory penalty factors enumerated above.

46. Complainant proposes that Respondent be assessed a civil penalty in the amount of Sixteen Thousand Three Hundred Forty Dollars (\$16,340) for the TSCA violations alleged in this Complaint. Attachment 1 to this Complaint provides documentation of Complainant's basis

for the civil penalty proposed in this Complaint.

47. Complainant's civil penalty request is based on the best information available to the EPA at the time of this Complaints issuance. The proposed penalty may be adjusted in the EPA's discretion if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriate civil penalty amount.

Payment of Proposed Penalty in Full

48. A Respondent may resolve this proceeding at any time by paying the full penalty proposed in the Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk. Payment of the total penalty, Sixteen Thousand Three Hundred Forty Dollars (\$16,340), may be made by certified or cashier's check payable to the "United States Treasury," and remitted to:

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

Wire transfers should be directed to the Federal Reserve Bank of New York:

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".

49. A copy of the check or other information confirming payment must simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Jennifer Trotter, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

50. Payments should reference the name and docket number of this Complaint.

Payment of Proposed Penalty in Lieu of an Answer

51. Respondent may resolve this proceeding by paying the proposed penalty in full instead of filing an answer to the Complaint may do so within thirty (30) days of receipt of the Complaint, in accordance with the procedures set forth above and in Part 22 of the Consolidated Rules of Practice. If Respondent wishes to resolve this proceeding by paying the proposed penalty in full instead of filing an answer but needs additional time to pay the penalty, Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint, in accordance with Rule 22.18(a) of the Consolidated Rules. The written statement shall state that Respondent agrees to pay the proposed penalty in full within sixty (60) days of receipt of the Complaint. The written statement need not contain any response to, or admission of, the allegations in the Complaint. Respondent must then pay the full amount of the proposed penalty within sixty (60) days of receipt of the Complaint. Failure to pay the full penalty within sixty (60) days of receipt of the Complaint may subject Respondent to default, as set forth below.

NOTICE OF OPPORTUNITY FOR HEARING

Answer and Request for Hearing

52. A Respondent must file a written answer within thirty (30) days of receipt of this Complaint if Respondent: a) contests any material fact upon which this Complaint is based; b) contends that the penalty proposed in this Complaint is inappropriate; or c) contends that it is entitled to judgment as a matter of law. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which a Respondent has any knowledge. Where a Respondent has no knowledge of a particular factual allegation, the answer shall so state. Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes an admission of the allegation. The answer shall also state: d) the circumstances or arguments which are alleged to constitute the grounds of any defense; e) the facts that a Respondent disputes; f) the basis for opposing the proposed penalty; and g) whether a hearing is requested.

53. The original and one copy of the answer shall be filed with the following, in accordance with Section 22.15 of the Consolidated Rules:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Jennifer Trotter, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard

Lenexa, Kansas 66219.

54. After the filing of Respondent's Answer to the Complaint, the Hearing Clerk at EPA Headquarters will serve as the Hearing Clerk, and all further filings in this matter (except for the filing of a Consent Agreement and Final Order pursuant to 40 C.F.R. 22.18(b)(3)) must be filed with the Hearing Clerk at the following addresses, as appropriate:

If using the U.S. Postal Service:

Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mailcode 1900R
1200 Pennsylvania Avenue NW
Washington, D.C. 20460.

If using UPS/FedEx/DHL:

Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Avenue NW
Washington, D.C. 20460.

Default

55. If, within thirty (30) days of receipt of a Complaint, Respondent fails to: (a) submit full payment of the proposed penalty; (b) submit a written statement to the Regional Hearing Clerk that Respondent agrees to pay the penalty within sixty (60) days of receipt of the Complaint; or (c) file a written answer to the Complaint; Respondent may be found in default. Default by Respondent constitutes, for the purposes of this proceeding, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalty proposed in the Complaint shall be assessed unless the Presiding Officer finds that the proposed penalty is clearly inconsistent with the record of the proceeding or TSCA.

Informal Settlement Conference

56. The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of TSCA and the regulations upon which this action is based. Regardless of whether a Respondent requests a hearing, a Respondent may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request an informal settlement conference, please contact:

Jennifer Trotter, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Telephone (913) 551-7180.

57. Any settlement which may be reached as a result of such a conference shall be recorded in a written consent agreement signed by all parties or their representatives and shall conform with the provisions of Section 22.18(b)(2) of the Consolidated Rules. No settlement or consent agreement shall dispose of this proceeding without a final order from the Regional Judicial Officer or the Regional Administrator.

58. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer must be filed.

**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date 4/18/2018

Damon Frippell, Acting
Jamie Green, Chief
Toxics and Pesticides Branch
Water, Wetlands, and Pesticides Division

Date 4/20/18

Jennifer Trotter
Jennifer Trotter, Attorney
Office of Regional Counsel

Attachment

Certificate of Service

I hereby certify that the original and one true and correct copy of the foregoing Complaint and Notice of Opportunity for Hearing were hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 1120 Renner Boulevard, Lenexa, Kansas 66219, on April 25, 2018. A true and correct copy of the foregoing Complaint and Notice of Opportunity for Hearing together with a copy of the Consolidated Rules of Practice Governing the Administrative Assessment Civil Penalties and Revocation or Suspension of Permits was sent by certified mail, return receipt requested, on

April 25, 2018 to:

Registered Office
Mader Enterprises LLC, d/b/a Earthway LLC
9904 Wayne Avenue
Kansas City, MO 64131

and

Mr. Keith Mader
Mader Enterprises LLC, d/b/a Earthway LLC
P.O. Box 11114
Overland Park, Kansas 66207